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THE  
L I F E  
OF  
ALEXANDER HAMILTON.

BY HIS SON  
JOHN C HAMILTON.

... .. genus unde Latinum  
Albanique patres, atque altæ moenia Romæ

SECOND EDITION.

VOL. II.

NEW-YORK:  
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## CONTENTS

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### CHAPTER XVI.

Laurens to Hamilton—Letters to De Noailles, La Fayette, and Greene—Inactivity of preceding Congress—Public Lands—Protest of Virginia—Public Distresses—Congress of 1782-3—Its Leading Member—Hamilton confers with Legislature of Pennsylvania—Discontents of the Army—Letter to Rhode Island—Report by Hamilton urging a National Revenue—Sinking Fund—Continental Money—Proceedings thereon—Army Memorial—Hamilton's Report thereon—His Resolution for a Revenue to be collected by Congress—Pledge to provide Revenues to Fund the Debt—Valuation of Lands—Advises Washington as to Army—Letter to Clinton—Hamilton urges that doors of Congress be opened—Washington to Hamilton—Armstrong's Address—Letter from Washington—Hamilton's Reply—Meeting of Officers—Washington's Address—Letter from Gates—Commendation of Washington—Hamilton suggests a Solid Union—Washington's Reply—Vote of Half-Pay . . . . . p 1

### CHAPTER XVII.

Intelligence of Peace—Early Negotiations with France—Treaty of Alliance—Instructions to Adams and Franklin—Ultimata as to Great Britain—Memorials of Gerard—Terms as to Spain—Adams desires to treat with England—Repressed by Vergennes—Jay's Despatches—Instructions to insist on Navigation of Mississippi—Madison enters Congress—French Influence—Invasion of Virginia—Flight of Jefferson—Capture of Richmond—Second Flight of Jefferson—Resolutions as to Mississippi—Memorial of La Luzerne to Congress—Pretensions of Spain—Madison's Instructions to

Jay—Spain refuses Aids—Conference of La Luzerne with Congress—Subsidy of France—Instructions to accept the Mediation of Russia—Instructions submitting Terms of Treaty with England to control of France—Madison proposes Grant of Power to exert Force against Delinquent States—Hamilton's Objections—Madison's Instructions to Adams—His Commission revoked—Adams's Mission to Holland—Writes to Russia—Denmark and Sweden—Vergennes suggests another Minister—Adams proceeds to Paris—Returns to Amsterdam—His Memorial and Letter to Congress—Dana's Mission to Russia—Hamilton advises temporary Treaty with Russia—Recommends a Neutral Policy—Terms of Treaty with England—Letter of Marbois—Overtures of England—Missions of Hartley, Oswald, Grenville—Jay disapproves Instructions—Repairs to Paris—Conferences—Concludes a Provisional Treaty—Conferences with D'Aranda—Report of R. R. Livingston on the Negotiation—Censure Proposed—Supported by Madison—Resisted—Hamilton's Encomium on Negotiation—Deprecates Foreign Influence . . . . . p 80

## CHAPTER XVIII.

Half-Pay—Hamilton's Correspondence with Washington—Army Claims—Parties in Congress—Substantial Funds—Hamilton to Washington as to Execution of Treaty—Reply—Army Claims—Hamilton advises a National Marine and National Coinage—Proceedings as to Revenue—Proposed Taxes—Hamilton condemns Arbitrary Assessments—Report as to Revenue—Hamilton's Substitute—Ratio of Contribution—Hamilton to Clinton—Morris resolves to resign—Consents to continue in Office—Hamilton's Report as to Invalid Corps—His Resolutions as to Army—Remonstrance to British Government—Removal of Obstructions to the Treaty—Hamilton to Clinton—Controversy with Vermont—Hamilton to Clinton—Reports Plan Quartermaster-General's Department—Plan regulating Intercourse with Indians—Plan of State Department and Plan of Peace Establishment—Militia System—Garrisoning Frontier Posts—Letter to Clinton—Urges Humanity to Indians—Mutiny at Philadelphia—His Views of it—Congress adjourn to Princeton—Hamilton's Policy and Opinions—His Resolutions recommending a New Constitution and a General Convention . . . . . p 151

## CHAPTER XIX.

Journey to Albany—Return to New-York—Letters of McHenry and Jay—Commences the Profession of the Law—Important Argument—Proceedings of New-York Legislature—Persecution of British Adherents—Election in New-York—Burr and Clinton—Hamilton resists a violent Policy, and sustains the Treaty—Publishes Essays of Phocion—Lenient Councils prevail—Forms Plan of a Bank—Manumission of Slaves . . . . . p 239

## CHAPTER XX.

Foreign Policy of United States—Hamilton's Views—Terms of Inter-course with English Dominions—Her policy—Congress of 1783, 1784—Jefferson's Report on Revenue—Government of Western Territory—Jefferson contemplates a Mission to Europe—Frames a Report on a System of Treaties—Jefferson appointed Commissioner—Resolution of Massachusetts—Jay elected Secretary of Foreign Affairs—Military Force reduced—Committee of States—Congress of 1784-5—Territorial Disputes—Proceedings of Commissioners at Paris—Jefferson's Negotiations with France—Advice as to French Debt—Consular Convention—Mission of Gardouqui—Negotiations with Spain—The Mississippi—British Policy—Embassy of Adams to London—His Opinions—Dissatisfaction and Return—Jefferson's Opinions—Hamilton's Views of American Policy . . . . . p. 282

## CHAPTER XXI.

Domestic Condition of United States—Cincinnati—Hamilton Recommends Abolition of its Hereditary Principle—Proclamations of England—Retaliatory Policy of States—Hancock—Bowdoin recommends a General Convention—Objections of Massachusetts Delegates—Commercial Policy of New-York—Hamilton urges Enlargement of Powers of Congress to regulate Trade—Distresses of New-England—Insurrections of Massachusetts and New-Hampshire—Virginia proposes a Commercial Convention—Meeting at Annapolis—Address by Hamilton . . . . . p 339

## CHAPTER XXII.

Congress of 1785-6—Appeal to New-York—Conduct of Clinton—Hamilton in New-York Legislature—Prepares Address—Speech on it—Speech on Act repealing Laws inconsistent with the Treaty—National and State Parties—His Remarks on the Election Law—Test Oaths—Legislative Restrictions—Frames a System of State Taxation—Policy as to Poorer Classes—Law for Collection of Small Debts—Bankrupt Act—Criminal Jurisprudence—System of Public Instruction—Speech on the Impost—Speech on Independence of Vermont . . . . . p 381


## CHAPTER XXIII.

Congress of 1786-7—Objections to proposed Convention—Hamilton urges Congress to recommend it—His Resolution to appoint Delegates to the Federal Convention—Appointed one of them—Declines a Re-election to the Legislature—Appointments by the States to the Convention—

Sketch of American Confederacies—State Constitutions—Opinions of Jay Madison, Hamilton, and Washington, on New Organization of Government —General Convention meets—Their Rules—Resolutions of Randolph and Pinckney—Debates on them—Constitution of the Legislative Department— Madison and Randolph in favour of a Plural Executive—Hamilton's View —Council of Revision—Jersey Plan—Comparative Views of Hamilton and Madison—Lansing's and Patterson's Remarks—Brief of Hamilton's Speech —His Plan of Government . . . . .	p 113
--	-------

## CHAPTER XXIV.

Debates on Randolph's Resolutions—Hamilton to Washington—His Re- ply—Lansing and Yates leave the Convention—Policy of Clinton—Hamil- ton's Appeal to the People—Discussion of proposed Compromise—Project of Tories as to Bishop of Osnaburgh—Hamilton to King—Invites Lansing and Yates to return to the Convention—Proceedings of it—Committee of Revisal—Hamilton signs the Constitution—His Opinions of Government— Proposes a President for Three Years in a Second Plan of a Constitution— His Views of the British Government—Comments on the Constitution of the United States—Future Prospects—Urges its Adoption as the best that could be obtained .. . . .	p. 508
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-  J. C. Journals of Congress  
 S. J. Secret Journals  
 D. C. Diplomatic Correspondence.

THE LIFE  
OF  
ALEXANDER HAMILTON.

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CHAPTER XVI.

[1782]

THE War of the Revolution, as a scene of military movements, fades into insignificance before the conflicts of the elder Nations of the earth.

It is as a war of Opinion—as the beginning of that great experiment in modern times, whether men are capable of self-government—that it assumes its immeasurable importance.

A new World is seen rising into view—a World of Hope; and as the great lights that shone upon its morning path of advancing glory appear, the grateful inquiry is—Whose were those superior minds that, amid the darkness of a chaotic confederacy, combined the elements of Social order, and formed them into a vast majestic Empire?

The Wealth of Nations is their illustrious few.

While Hamilton, at the head of his corps, was approaching York Town, letters were addressed to him urging his acceptance of a seat in congress. But it was possible that his services in the field might yet be required, and he was unwilling to retire from the army.

"I would not wish," Laurens wrote, "to have you for a moment withdrawn from the public service; at the same time my friendship for you, and knowledge of your value to the United States, make me most ardently desire that you should fill only the first offices of the republic. I was flattered with an account of your being elected a delegate from New-York, and am much mortified not to hear it confirmed by yourself. I must confess to you, that at the present stage of the war I should prefer your going into congress, and from thence becoming a minister plenipotentiary for peace,\* to your remaining in the army, where the dull system of seniority and the tableau would prevent you from having the important command to which you are entitled."

As the prospect of peace opened, Hamilton changed his views, and he took his seat in the great council of the confederacy, over which he had hitherto exerted an unacknowledged influence with much gratification.

The partial success which had attended his efforts, as continental receiver, to draw out the public resources, taught him that little was to be expected from domestic supplies. A loan which he had endeavoured to effect during his residence at Albany had failed, and he now looked to France as affording the only hope of relieving the distresses of the treasury.

\* La Fayette, when in Europe, urged the minister of France to use his influence that Hamilton should be sent envoy to London—"I advise you to take a gentleman who has no connection with the great men in England. Our friend Hamilton would be a very proper choice. You ought to bring it about. There are few men so honest and sensible. I hope you may send him. He knows better than all the British councils."

That hope was faint The capture of Cornwallis had induced her ministry late in the preceding year to make a new loan, with a view to the recovery of New York and Charleston; but they at the same time announced in the most peremptory manner their determination not to grant larger aids Yet there was no other resource; and under this conviction he addressed the following letters to De Noailles and La Fayette.

“Esteem for your talents and acquirements, is a sentiment which from my earliest acquaintance with you, my dear viscount, I have shared in common with all those who have the happiness of knowing you; but a better knowledge of your character has given it in my eyes a more intrinsic merit, and has attached me to you by a friendship founded upon qualities as rare as they are estimable. Averse as I am to professions, I cannot forbear indulging this declaration, to express to you the pleasure I feel at receiving, after an inexplicable delay, the letter you were so obliging as to write me before your departure from Boston. It was of that kind which is always produced by those attentions of friends we value, which, not being invited by circumstances nor necessitated by the forms of society, bespeak the warmth of the heart; at least, my partiality for you makes me fond of viewing it in this light, and I cherish the opinion.

“I was chagrined to find that you left us with an intention not to return. Though I should be happy if, by a removal of the war, this country should cease to be a proper theatre for your exertions, yet if it continues to be so, I hope you will find sufficient motives to change your resolution. Wherever you are, you will be useful and distinguished; but the ardent desire I have of meeting you again, makes me wish America may be your destination I would willingly do it in France, as you invite me to do; but the

prospect of this is remote. I must make a more solid establishment here before I can conveniently go abroad. There is no country I have a greater curiosity to see, or which I am persuaded would be so interesting to me, as yours. I should be happy to renew and improve the valuable acquaintances from thence which this war has given me an opportunity of making; and though I would not flatter myself with deriving any advantage from it, I am persuaded it is there I should meet with the greatest number of those you describe, who, &c : but consideration of primary importance will oblige me to submit to the mortification of deferring my visit.

“In the mean time, I should be too much the gainer by a communication with you, not gladly to embrace the offer you so politely make for writing to each other.

“The period since you left us has been too barren of events to enable me to impart any thing worth attention. The enemy continues in possession of Charleston and Savannah, and leaves us master of the rest of the country. It is said the assemblies of the two invaded states are about meeting to restore the administration of government. This will be a step to strengthening the hands of General Greene and counteracting the future intrigues of the enemy. Many are sanguine in believing that all the southern posts will be evacuated, and that a fleet of transports is actually gone to bring the garrisons away; for my part, I have doubts upon the subject. My politics are that while the present ministry can maintain their seat and procure supplies, they will prosecute the war on the mere chance of events, and that while this is the plan, they will not evacuate posts so essential as points of departure from whence, on any favourable turn of affairs, to renew their attack on our most vulnerable side; nor would they relinquish objects that would be so useful to them, should the worst happen in a final negotiation. Clinton, it is



said, is cutting a canal across New-York island, through the low ground about a mile and a half from the city. This will be an additional obstacle; but if we have otherwise the necessary means to operate, it will not be an insurmountable one. I do not hear that he is constructing any other new works of consequence. To you who are so thoroughly acquainted with the military posture of things in this country, I need not say that the activity of the next campaign must absolutely depend on effectual succours from France. I am convinced we shall have a powerful advocate in you. La Fayette, we know, will bring the whole house with him if he can.

“There has been no material change in our internal situation since you left us. The capital successes we have had, have served rather to increase the hopes than the exertions of the particular states. But in one respect we are in a mending way. Our financier has hitherto conducted himself with great ability, has acquired an entire personal confidence, revived in some measure the public credit, and is conciliating fast the support of the moneyed men.

“His operations have hitherto hinged chiefly on the seasonable aids from your country, but he is urging the establishment of permanent funds among ourselves; and though, from the nature and temper of our governments, his applications will meet with a dilatory compliance, it is to be hoped they will by degrees succeed. The institution of a bank has been very serviceable to him. The commercial interest, finding great advantages in it, and anticipating much greater, is disposed to promote the plan; and nothing but moderate funds, permanently pledged for the security of lenders, is wanting to make it an engine of the most extensive and solid utility.

“By the last advices, there is reason to believe the delinquent states will shortly comply with the requisition of congress for a duty on our imports. This will be a great

The executive departments, as Hamilton anticipated when he suggested them, were introducing system and economy into the administration; and thus the annual expenditure, which had risen to twenty, was reduced to eight millions.

But there was not in the national legislature a single individual who combined the qualities necessary to give to the public councils the impulse, the direction, and the vigour which the condition of the country so much demanded.

With repeated and impressive earnestness the superintendent of finance is seen exhorting the adoption of measures suited to the exigencies of the period, but no answering voice is heard from congress

The creation of a currency—the importance of funding the debt—the utility of loans—the necessity of revenue supplemental to that to be derived from the impost—of a land tax, a poll tax, an excise—were all urged by him, but urged in vain.

The early enthusiasm of the nation had passed away. The authority of government had not followed: all was apathy and irresolution, or temporary expedient.

Funds could not indeed be obtained without the sanction of the states; but the great principles of public faith might have been enforced. Pledges to fulfil it might have been given. The people might have been appealed to, and thus accustomed to the always useful language of truth.

The incorporation of a bank, opposed by Madison from scruples as to its constitutionality, was the only measure of relief adopted.

While waiting the concurrence of the states in the grant of authority to collect an impost, endeavours were made to induce a cession of the unappropriated lands to the common treasury.

The disposal of this vast domain had early attracted the attention of the general legislature.

Assuming that the unappropriated territory had become

national property, a bounty in the public lands was offered, the second year of the war, as an inducement to enlist. Averse to this measure, Maryland suggested the substitute of a money bounty, but the suggestion was not approved.

Two years after, Virginia passed a law opening offices for the sale of her lands. As her territorial claims were regarded with much jealousy by the other states, congress urged her "to forbear."

New-Jersey proposed an amendment to the articles of the confederation, which, while it admitted the jurisdiction of each state over the public demesne within its chartered limits, declared that the crown lands ought to belong to congress in trust for the United States.

Maryland, when she approved those articles, instructed her delegates not to ratify them unless the principle was distinctly admitted of a joint interest of the United States in this territory. Virginia interposed a remonstrance

Sensible of the importance of removing this obstacle to a completion of the confederation, New-York, though one of the largest claimants, soon after made a cession of her rights.

Congress hastened to avail themselves of this propitious example ; and having expressly declined a discussion of the conflicting claims, recommended a liberal surrender by the states, in order to establish the federal union on a permanent basis.

They soon after resolved that the ceded lands should be disposed of for the common benefit, and formed into distinct republican states to become members of the union. They also declared that the expenses incurred by any particular state in the reduction of any British posts, or in the defence or acquisition of any part of the ceded territory, should be reimbursed.

Alive to the importance of completing the articles of confederation, Maryland, though she still affirmed her title

to a share in the unappropriated lands, at last acceded to them.

Virginia adhered to her original views. A narrow policy swayed her councils—a policy which, content with the temporary political importance she conferred on her public men, left her great resources without culture, and sacrificed her permanent interests to their speculative theories.

The claims of the whole union were denominated “aggressions”—aggressions which she ought to be prepared to resist. Yielding at last, she made a formal cession of her lands, but clogged with conditions which congress pronounced “incompatible with the honour, interest, and peace of the union.” By one of these conditions, a guarantee of her territory from the Atlantic to the Ohio was required.

This subject was some time after resumed, and a day was proposed to consider the western limits beyond which congress would not extend their guarantee to the particular states, to ascertain what territory belonged to the United States, and to establish a plan for the disposal of it in order to discharge the national debts.

The delegates of Virginia, Jones, Madison, and Randolph, protested. They refused to give evidence of her title, as New-York had done—stated that congress had recommended a “liberal surrender,” and to make her acts of cession the basis of a discussion of her rights, was in direct contravention of that recommendation.\*

\* Madison wrote to Pendleton —“You are not mistaken in your apprehensions for our western interests. An agrarian law is as much coveted by the *little* members of the union, as ever it was by the *indigent* citizens of Rome.—We have made every opposition and remonstrance to the conduct of the committee which the forms of proceedings will admit. When a report is made, we shall renew our efforts upon more eligible ground, but with little hope of arresting any aggression upon Virginia, which depends solely on the inclination of congress.”——“We are very anxious to bring the matter to

Notwithstanding her pertinacity, the utility of the measure was too obvious to permit its being abandoned, and late in this congressional year a report was made to congress, again recommending cessions of these lands as "an important fund for the discharge of the national debt" On the final vote, this report was lost by a geographical division. The states north of the Potomac being unanimous in favour of it, and the four southern states, with the exception of two members, opposing it \*

A strong indication of the feelings on this subject, was also given in a vote on the instructions as to the terms of a treaty with England. On a motion to amend them so as to require that France should support the territorial claims of these *states*, Maryland proposed to insert the word "united" before the word "states." The proposition was rejected. Thus, from these collisions, all expectation of relief from that great source of wealth was disappointed.

The controversies as to limits between Pennsylvania and Connecticut, and between New-York and the inhabitants of the New-Hampshire grants, now comprised within Vermont, were also unadjusted. The contentions produced by these controversies extended their influence to other members of the confederacy, and as the decision would affect their future political weight, occupied a large share in their discussions.

A proposal had been made for a requisition to pay the interest on the liquidated accounts. But the condition of

issue, that the state may know *what course their honour and security* require them to take"—Nov 1781—"Considering the extensive interests and claims which Virginia has, and the enemies and calumnies which these very claims form against her, she is perhaps under the strongest obligation of any state in the Union to *preserve her military contingent* on a respectable footing, and unhappily her line is, perhaps, of all, in the most disgraceful condition"—April, 1782—Madison Papers, vol 1, pages 99, 101, 117

\* Ayes—Bland and Izard

the treasury forbade its adoption, and notwithstanding the exertions of the superintendent of finance, congress were compelled to pass a resolution suspending the payment of the interest on the loan-office certificates.—The only remaining vestige of public credit was effaced.

This session, so fruitless in results, at last closed with another requisition of six millions of dollars for the current service: again showing the impotence of what Hamilton had long since pronounced it—"This futile and senseless confederation."

The community presented in its private relations a not less disheartening scene. The waste of war had produced an increased demand for the products of agriculture, which in some measure supplied the want of a foreign market; and the expenditures of the government had, during its earlier periods, created a fulness and rapidity of circulation which bore the semblance of prosperity. The numbers employed in military service had also induced an increased demand for labour, so as to enhance its value. But when the currency depreciated, and the wants of the government were reduced, when trade began to be restored to its natural level, and the enforcement of debts followed, the people awakened from their illusions, the tranquillity of society was disturbed, and it seemed as though a pestilence, as unforeseen as fatal, was sweeping over the land.

To these evils flowing from the obstruction of industry, from vitiated unfunded paper emissions, from national bankruptcy, were added the pernicious consequences of legislative proscription. It was after a comprehensive survey of these manifold evils that Hamilton remarked, "The more I see, the more I find reason for those who love this country to weep over its blindness."

Various circumstances combined to render the session of congress which had just commenced one of the deepest

interest—the period at which it assembled, the retirement of many of the elder members who had previously directed the public councils, the devolution of these upon younger men, whose views had not been developed, and the importance of the topics upon which they were called to act.

The principal of these were—the restoration of the public credit by the reduction of the expenditures of the confederacy, and by the establishment of permanent funds for its support, and for the redemption of the debt; the adjustment of the terms of peace, and the conclusion of a treaty with England; the organization of a peace establishment; and the disbanding of the residue of the army under circumstances of peculiar embarrassment.

Of the proceedings on these questions, few other memorials remain than those which are to be gleaned from the journals of congress, and such occasional lights as may be derived from the few letters which have been preserved relating to this period. Unfortunately for the truth and for our national fame, no authentic statement of the debates exists; and instead of a sketch of the ardent discussions which took place, and which so much enrich the contemporaneous history of the British parliament, a bare recital of a part of the naked results can only be made.

Yet these are fully deserving attention, as giving a progressive view of Hamilton's opinions and services in the school which prepared him for his subsequent career, and as indispensable to the study of American history.

The federal legislature was organized by the election of Elias Boudinot as president, a delegate from New-Jersey, who had rendered many important services, had made many sacrifices, and deservedly enjoyed the largest confidence.

The greatest number of members who attended during

this session did not exceed thirty ; of these, Witherspoon, Clymer, Elsworth, McKean, Floyd, and Clark, had been delegates in seventeen hundred and seventy-six.

The first, a native of Edinburgh and a divine, had acquired celebrity from the powerful talent he had evinced in polemical controversy, had received a finished education, and was chiefly distinguished for that penetrating shrewdness and invincible constancy of purpose which mark the national character of the country of his birth.

Clymer was a merchant of Philadelphia. His known probity had given him a strong hold on the confidence of that city. His eminent firmness had recommended him to the convention of Pennsylvania as a delegate to congress, when Dickinson refused to sign the Declaration of Independence, and other members had withdrawn, and thus his name is signally connected with that imperishable document. At a later period of the session, Pennsylvania was also represented by Wilson, a lawyer of a vigorous and cultivated intellect.

Randolph having retired, was succeeded by Colonel Bland, who had served with reputation in the army, was a man of comprehensive and liberal views, and of a probity unblemished, unsuspected, and unsuspicious. With him were associated Jones and Lee, Mercer and Madison, composing the delegation from Virginia. The intimate connection of the latter with the incidents of this narrative, places him so frequently in view, as to supersede the necessity of delineating a character not easily analyzed.

John Rutledge, regarded by South Carolina as the great pillar of the revolution in that state, had long presided over her councils, and brought into this assembly all the weight of an established reputation, the influence of inflexible determination, great experience, high eloquence.

Oliver Elsworth soon after took his seat, first among the patriots whom Connecticut boasts. He had early acquired



much reputation at the bar for his accurate and extensive professional attainments, and a practical sagacity, which, after long service, was matured into a high civil prudence. Relying on the justness of his own intellect, he did not often seek the conflict of debate; but when an exertion was least anticipated, by the union of strength with consummate skill, he rarely failed to triumph over the adverse party.

With these able men Hamilton was now associated.

To prepare him for the high office to which he was destined, no individual could have been placed in more auspicious circumstances. As the youthful champion of popular rights against the advocates of arbitrary power, his mind was early conversant with all the great fundamental principles of civil liberty. Mingling with the people at the outbreak of the revolution, he entered intimately into all their sympathies, and saw and measured the conflicting forces of reason and passion on masses of men, and learned to give to each its due weight and value.

In the commission which he held during the campaign of seventeen hundred and seventy-six, he was taught, in a most active and arduous service with the untrained and ill-supplied levies of an army little organized, the important lessons of self-dependence and self-command, and witnessed all the resource and elasticity, endurance and confidence, of the American character.

As the confidential aid of the commander-in-chief, his illustrious friend, every object was placed before him on the largest scale. He looked upon the country as from an eminence, and was enabled to survey it in all its bearings, and to collect all the lights of the vast panorama.

Intimate with all the inmost councils of his chief, participating in all his hopes and fears, he was there not only to suggest, to concert, to compare, to arrange with him the measures that were resolved, but was in their constant

administration Hence, each day he was called to think for the morrow, and each hour learned some lesson of practical wisdom Plans and results in their instructive march passed before him in rapid succession His salient genius was forever in motion, and he was forever under the pressure of responsibility.

The correspondence with the states and with congress informed him of the complexity and defects of the several systems, each asking and each denying aid to their mutual infantile dependence.

His foreign birth was a public advantage. It left him free from all the local prejudices which infect and are the bane of a confederacy. His strong vision was obstructed by nothing artificial; and when contending for the common cause of liberty, he felt that he was contending for a Nation of freemen. The states were mere political existences, which might vanish in a moment. He allied all his thoughts and directed all his acts to one great, and, as he hoped, enduring entity—the whole people of the United States

It was to forward this great purpose, to form “of many one nation,” that he accepted a place in the public councils; and while his best efforts were exerted to meet present exigencies, the mode in which he met them, shows that he was ever intent upon the great purpose of securing to them the blessings of liberty in the establishment, by themselves, of a balanced constitution of government.

Of the distinctive features of that commanding and winning eloquence, the wonder and the delight of friend and foe, but of which no perfect reports are preserved, a delineation will not now be attempted.

It suffices here to observe how deeply his modes of thinking imparted to the proceedings of this body a new tone and character. And those who remark in these pages the sentiments with which he regarded the demands of the

army, how solemn his respect for the requirements of justice, how incessant and undesparring his efforts to fulfil them, can best image to themselves with what living touches and thrilling appeals he called up before this senate their accumulated wrongs, and with what deep emotions and almost holy zeal he urged, he enforced, he implored, with all the ardour of his bold and generous nature, an honest fulfilment of the obligations to public faith

Of the estimation in which he was early held, these facts recently known give strong evidence. He was earnestly recommended by Greene and La Fayette to the important commission of adjutant-general; and when the station in the country of highest trust and widest influences, next to that of the commander-in-chief, the superintendence of the finances, was first to be filled, he was in view.

General Sullivan, a delegate from New-Hampshire, was answered by Washington in these terms.—“The measure adopted by congress of appointing ministers of war, finance, and for foreign affairs, I think a very wise one. To give efficacy to it, proper characters will, no doubt, be chosen to conduct the business of these departments. How far Colonel Hamilton, of whom you ask my opinion as a financier, has turned his thoughts to that particular study, I am unable to answer, because I never entered upon a discussion upon this point with him. But this I can venture to advance from a thorough knowledge of him, that there are few men to be found, of his age, who have a more general knowledge than he possesses; and none, whose soul is more firmly engaged in the cause, or who exceeds him in probity and sterling virtue.”\*

Although the greater number of the members of congress had assembled at the opening of the session on the

\* Sullivan replied “I am glad to find that you entertain the same sentiments of the virtues and abilities of Colonel Hamilton as I have ever done myself After I wrote, I found the eyes of congress turned upon Robert

fourth of November,\* yet, with the exception of the discussion of a proposition to quiet the long-pending controversy between New-York and Vermont, no topic of permanent interest occupied their deliberations until after the arrival of Hamilton, who took his seat on the twenty-fifth of that month.

During the following week, having in view an efficient system of finance, he is seen uniting in a motion to postpone a proposed provision for certain temporary corps of the army; recommending as chairman of the army committee, in order to reduce the expenditure, the substitution of a specified allowance in money for the stipulated rations; and reporting a resolution dissuading any relief to the foreign officers then in the service, (a class of meritorious individuals, whose situation he declared involved a peculiar hardship, and required, if possible, some discrimination in their favour,) lest, in the embarrassed state of the finances, it might derange the general plans of the superintendent of finance, to whose discretion they were referred.

Memorials from the legislature of Pennsylvania, which had been laid before congress, but had not been acted upon, presented to them a subject of great delicacy and magnitude.

That state had late in the preceding summer† complained, as a serious grievance, of the inability of its citizens to settle their accounts with the United States, of the non-payment of the debts due to them by the public, and of the suspension of the interest on certain classes of certificates. Expressing an apprehension that this suspension would be extended farther, she represented that other states were making provision for the liquidation and payment of the debts due to their citizens; that the collection

MORRIS as financier, I did not therefore nominate Colonel Hamilton, as I foresaw it would be a vain attempt "

\* 1782.

† August 28, 1782.

of taxes was impeded; and urged that a general plan should be devised for settling the unliquidated debts of the United States, for paying them or a part of them, and also for the regular and punctual discharge of the interest on all the public debts, until the principal should be finally discharged. These views were again enforced upon congress in a recent memorial.\*

The whole extent of the contributions of the confederacy during the past year, to a requisition for eight millions of dollars, had little exceeded four hundred thousand, while the foreign loans had yielded less than a million; with which sums the government had been carried on.

To satisfy the demands of the public creditors in this state of the finances, was evidently impracticable; yet how to refuse without offending this central state, conspicuous for its liberal policy throughout the war, and which numbered among its claimants many of those who had most largely contributed to the relief of the treasury, was a consideration of the highest moment. To assuage its growing irritation, and by a frank exposition of their true situation, while congress showed its inability to fulfil their engagements, to endeavour to inspire confidence in the ultimate discharge of the debt, was a course dictated by integrity and policy.

With this view, Hamilton, on the fourth of December, moved the appointment of a committee of conference with her legislature.

The demands of Pennsylvania had assumed a serious character. The alternative was presented to congress, either to make a substantial provision for her claims, or, without the power of coercion, to behold her appropriating all her own resources to discharge the debts due by the confederation to her own citizens.

But still more cogent motives now arose to prompt efficient measures of finance. The progress of the negotiations had induced a general expectation of peace, which was confirmed by the movement of the French auxiliaries to Boston, to embark for the West Indies.

As the probability of a treaty being concluded increased, the reduction of the army became a topic of universal discussion.

After their great and long privations, the army under any other circumstances would have looked to this event with intense gratification; for, unlike the soldiers of more populous regions, they had relinquished avocations which yielded them an ample competence, with a full knowledge of the sacrifices they were about to make.

But their return to private life was now clouded with the most desolate and appalling prospects. Loaded with debts incurred for their subsistence, their youth gone by, many with families worn down by poverty—these veterans saw in their expected disbandment, the moment when they were to be turned in penury upon the world, deprived of their just dues, and without any provision for their half-pay, by the assurance of which the officers had been encouraged to continue in the service, and to which they looked as their chief resource in the closing scenes of life.

Influenced by a sense of their wrongs, their murmurs increased, and in no bosom did they excite stronger sympathy than in that of their fellow-soldier and friend.

With such urgent motives for an early action upon this subject, Hamilton, two days after,\* moved a resolution directing the superintendent of finance to represent to the states the indispensable necessity of their complying with the requisition for raising a sum equal to a year's interest

\* December 6

of the domestic debt, and two millions for the current service; and to point out the embarrassments which resulted from appropriations by the states of the moneys required by congress, "assuring them that they were determined to make the fullest justice to the public creditors an invariable object of their counsels and exertions."

His resolution embraced the appointment of a deputation to Rhode Island, to urge the grant of the impost "as a measure essential to the safety and reputation of these states;" and with a view to carry it immediately into effect,\* he brought forward the draft of an ordinance for its collection.

The deputation to Rhode Island was appointed, its delegates alone dissenting, and the following letter, prepared by Hamilton, was addressed to the governor of that state.†

"SIR,

"Congress are equally affected and alarmed by the information they have received, that the legislature of your state at their last meeting have refused their concurrence in establishing a duty on imports. They consider this measure as so indispensable to the prosecution of the war, that a sense of duty and regard to the common safety, compel them to renew their efforts to engage a compliance with it; and in this view they have determined to send a deputation of three of their members to your state, as expressed in the enclosed resolution. The gentlemen they have appointed will be able to lay before you a full and just representation of public affairs, from which they flatter themselves will result a conviction of the propriety of their solicitude upon the present occasion. Convinced by past experience of the zeal and patriotism of the state of Rhode Island, they cannot doubt that it will yield to those

\* December 10.

† December 11.

urgent considerations which flow from a knowledge of our true situation.

“They will only briefly observe, that the increasing discontents of the army, the loud clamours of the public creditors, and the extreme disproportion between the public supplies and the demands of the public service, are so many invincible arguments for the fund recommended by congress. They feel themselves unable to devise any other, that will be more efficacious, less exceptionable, or more generally agreeable; and if this is refused, they anticipate calamities of a most menacing nature—with this consolation, however, that they have faithfully discharged their trust, and that the mischiefs which may follow cannot be attributed to them.

“A principal object of the proposed fund is to *procure loans abroad*. If no security can be held out to lenders, the success of these must necessarily be very limited. The last accounts on the subject were not flattering; and when intelligence shall arrive in Europe, that the state of Rhode Island has disagreed to the only fund which has yet been devised, there is every reason to apprehend it will have a fatal influence upon their future progress.

“Deprived of this resource, our affairs must in all probability rapidly hasten to a dangerous crisis, and these states be involved in greater embarrassments than they have yet experienced, and from which it may be much more difficult to emerge. Congress will only add a request to your excellency, that if the legislature should not be sitting, it may be called together as speedily as possible, to enable the gentlemen whom they have deputed, to perform the purpose of their mission.”

A similar appeal had been made the previous summer to which formal objections were interposed.

The next day the delegates from that state laid before



congress a letter from the speaker of its lower house. This letter stated that the recommendation of congress had been unanimously rejected, and gave the grounds of that rejection. Upon the basis of this procedure, the Rhode Island delegates moved that the resolve appointing a deputation to it, should be rescinded. At the instance of Hamilton, the previous question was carried; and four days after, he laid before congress an address to that state, prepared in answer to the speaker's letter.

This paper is of great importance, as the earliest public document in which the policy of a national revenue is discussed in the spirit of a statesman, and will be perused with deep interest, as an exposition of the views Hamilton had long entertained on some of the great questions upon which he was subsequently called to act.

The objections of Rhode Island were answered in succession.\* The first of these alleged its inequality, as "bearing hardest upon the commercial states." It was met by a statement of the general principle, that "every duty on imports is incorporated in the price of the commodity, and ultimately paid by the consumer, with a profit on the duty as a compensation" for the advance by the merchant. An overstocked market, and competition among the sellers, might prevent this; but in the general course of trade, the demand for consumption preponderates.

Every class of the community bears its share of the duty in proportion to the consumption, which is regulated by its comparative wealth. "A chief excellence," he observed, "of this mode of revenue is, that it preserves a just measure to the abilities of individuals, promotes frugality, and taxes extravagance." The same reasoning applies to the intercourse between two states; either will only feel

the burden in the ratio to its consumption and wealth. The impost, instead of bearing hardest on the most commercial states, will rather have a contrary effect, though not in a sufficient degree to justify an objection on the part of the non-importing states. But "overnice and minute calculations in matters of this nature, are inconsistent with national measures; and, in the imperfect state of human affairs, would stagnate all the operations of government. Absolute equality is not to be attained; to aim at it, is pursuing a shadow at the expense of the substance; and in the event, we should find ourselves wider of the mark, than if, in the first instance, we were content to approach it with moderation."

The second objection, "that the impost would introduce into the states officers unknown and unaccountable to them, and was thus contrary to the constitution of the state," was replied to at length.

"It is not to be presumed," Hamilton remarked, "that the constitution of any state could mean to define and fix the precise numbers and descriptions of all officers to be permitted in the state, excluding the creation of any new ones, whatever might be the necessity derived from that variety of circumstances incident to all political institutions. The legislature must always have a discretionary power of appointing officers, not expressly known to the constitution; and this power will include that of authorizing the federal government to make the appointments in cases where the general welfare may require it. The denial of this would prove too much; to wit, that the power given by the confederation to congress, to appoint all officers in the post-office, was illegal and unconstitutional.

"The doctrine advanced by Rhode Island would perhaps prove also that the federal government ought to have the appointment of no internal officers whatever; a position that would defeat all the provisions of the confederation,

and all the purposes of the union. The truth is, that no federal constitution can exist without powers that in their exercise affect the internal police of the component members. It is equally true, that no government can exist without a right to appoint officers for those purposes which proceed from, and centre in, itself; and therefore the confederation has expressly declared, that congress shall have authority to appoint all such 'civil officers as may be necessary for managing the general affairs of the United States under their direction.' All that can be required is, that the federal government confine its appointments to such as it is empowered to make by the original act of union or by the subsequent consent of the parties; unless there should be express words of exclusion in the constitution of a state, there can be no reason to doubt that it is within the compass of legislative discretion to communicate that authority. The propriety of doing it upon the present occasion is founded on substantial reasons.

"The measure proposed is a measure of necessity. Repeated experiments have shown, that the revenue to be raised within these states is altogether inadequate to the public wants. The deficiency can only be supplied by loans. Our applications to the foreign powers on whose friendship we depend, have had a success far short of our necessities. The next resource is, to borrow from individuals. These will neither be actuated by generosity nor reasons of state. 'Tis to their interest alone we must appeal. To conciliate this, we must not only stipulate a proper compensation for what they lend, but we must give security for the performance. We must pledge an ascertained fund, simple and productive in its nature, general in its principle, and at the disposal of a single will. There can be little confidence in a security under the constant revisal of thirteen different deliberatives. It must, once for all, be defined and established on the faith of the states,

solemnly pledged to each other, and not revocable by any without a breach of the general compact. 'Tis by such expedients that nations whose resources are understood, whose reputations and governments are erected on the foundation of ages, are enabled to obtain a solid and extensive credit. Would it be reasonable in us to hope for more easy terms, who have so recently assumed our rank among the nations? Is it not to be expected, that individuals will be cautious in lending their money to a people in our circumstances, and that they will at least require the best security we can give?"

Having adverted to the peculiar motives to remove the existing prepossessions unfavourable to the public credit, by means the most obvious and striking, he observed:—

"It was with these views congress determined on a general fund; and the one they have recommended must, upon a thorough examination, appear to have fewer inconveniences than any other.

"It has been remarked, as an essential part of the plan, that the fund should depend on a single will. This will not be the case, unless the collection, as well as the appropriation, is under the control of the United States; for it is evident that, after the duty is agreed upon, it may in a great measure be defeated by an ineffectual mode of levying it. The United States have a common interest in a uniform and equally energetic collection; and not only policy, but justice to all the parts of the Union, designates the utility of lodging the power of making it where the interest is common. Without this, it might in reality operate as a very *unequal tax*."

The third objection was, "That by granting to congress a power to collect moneys from the commerce of these states indefinitely as to time and quantity, and for the expenditure of which they are not to be accountable to the states, they would become independent of their constitu-

ents; and so the proposed impost is repugnant to the liberty of the United States."

"Admitting the principle of this objection to be true, still it ought to have no weight in the present case, because there is no analogy between the principle and the fact.

"First—The fund proposed is sufficiently definite as to time, because it is only coextensive with the existence of the debt contracted, and to be contracted in the course of the war. Congress are persuaded that it is as remote from the intention of their constituents to perpetuate that debt, as to extinguish it at once by a faithless neglect of providing the means to fulfil the public engagements. Their ability to discharge it in a moderate time, can as little be doubted as their inclination; and the moment that debt ceases, the duty, so far as respects the present provision, ceases with it.

"The resolution recommending the duty, specifies the object of it to be the discharge of the principal and interest of the debts already contracted on the faith of the United States for supporting the present war

"Secondly—The rate per cent. is fixed, and it is not at the option of the United States to increase it. Though the product will vary according to the variations in trade, yet, as there is this limitation of the rate, it cannot be properly said to be indefinite as to quantity.

"By the confederation, congress have an absolute discretion in determining the quantum of revenue requisite for the national expenditure. When this is done, nothing remains for the states separately but the mode of raising. No state can dispute the obligation to pay the sum demanded, without a breach of the confederation; and when the money comes into the treasury, the appropriation is the exclusive province of the federal government. This provision of the confederation, (without which it would be an empty form,) comprehends in it the principle in its fullest

latitude, which the objection under consideration treats as repugnant to the liberty of the United States; to wit, an indefinite power of prescribing the quantity of money to be raised, and of appropriating it when raised

“If it be said that the states, individually, having the collection in their own hands, may refuse a compliance with exorbitant demands, the confederation will answer, that this is a point of which they have no constitutional liberty to judge. Such a refusal would be an exertion of power, not of right; and the same power which could disregard a requisition made on the authority of the confederation, might at any time arrest the collection of the duty.

“The same kind of responsibility which exists with respect to the expenditure of the money furnished in the forms hitherto practised, would be equally applicable to the revenue from the imports.

“The truth is, the security intended to the general liberty in the confederation, consists in the frequent election and in the rotation of the members of congress, by which there is a constant and an effectual check upon them. This is the security which the people in every state enjoy against the usurpations of their internal governments; and it is the true source of security in a representative republic. The government so constituted, ought to have the means necessary to answer the end of its institution. By weakening its hands too much, it may be rendered incapable of providing for the interior harmony or the exterior defence of the state.

“The measure in question, if not within the letter, is within the spirit of the confederation. Congress by that are empowered to borrow money for the use of the United States, and, by implication, to concert the means necessary to accomplish the end. But without insisting on this argument, if the confederation has not made proper provision for the exigencies of the states, it will be at all times

the duty of congress to suggest further provisions; and when their proposals are submitted to the unanimous consent of the states, they can never be charged with exceeding the bounds of their trust. Such a consent is the basis and sanction of the confederation, which expressly, in the thirteenth article, empowers congress to agree to and prepare such additional provision

“The remarks hitherto made, have had reference principally to the future prosecution of the war. There still remains an interesting light in which the subject ought to be viewed.

“The United States have already contracted a debt in Europe and in this country, for which their faith is pledged. The capital of this debt can only be discharged by degrees; but a fund for this purpose, and for paying the interest annually, on every principle of policy and justice, ought to be provided. The omission will be the deepest ingratitude and cruelty to a large number of meritorious individuals, who, in the most critical periods of the war, have adventured their fortunes in support of our independence. It would stamp the national character with indelible disgrace.

“An annual provision for the purpose will be too precarious. If its continuance and application were certain, it would not afford complete relief. With many, the regular payment of interest, by occasional grants, would suffice; but with many more it would not. These want the use of the principal itself, and they have a right to it; but since it is not in our power to pay off the principal, the next expedient is to fund the debt, and render the evidences of it negotiable.

“Besides the advantage to individuals from this arrangement, the active stock of the nation would be increased by the whole amount of the domestic debt, and of course, the abilities of the community to contribute to the public

wants; the national credit would receive and stand hereafter on a secure basis."

This was another object of the proposed duty.

The eligibility of this fund was next shown. "The principal thing," he said, "to be consulted for the advancement of commerce, is to promote exports; all impediments to these, either by way of prohibition or by increasing the prices of native commodities, decreasing by that means their sale and consumption at foreign markets, are injurious. Duties on exports have this operation. For the same reasons, taxes on possessions and the articles of our own growth and manufacture, whether in the form of a land tax, excise, or any other, are more hurtful to trade than import duties. But it was not to be inferred that the whole revenue ought to be drawn from imports; all extremes are to be rejected. The chief thing to be attended to is, that the weight of the taxes fall not too heavily in the first instance upon particular parts of the community: a judicious distribution to all kinds of taxable property, is a first principle in taxation."

The report closed with these impressive reflections, suggested by the language of Rhode Island:—

"There is a happy mean between too much confidence and excessive jealousy, in which the health and prosperity of a state consist. Either extreme is a dangerous vice: the first is a temptation to men in power to arrogate more than they have a right to; the latter enervates government, prevents system in the administration, defeats the most salutary measures, breeds confusion in the state, disunites and discontents among the people, and may eventually prove as fatal to liberty as the opposite temper.

"It is certainly pernicious to leave any government in a situation of responsibility disproportionate to its power. The conduct of the war is intrusted to congress, and the public expectation turned upon them, without any compe-



tent means at their command to satisfy the important trust. After the most full and solemn deliberation, under a collective view of all the public difficulties, they recommend a measure which appears to them the corner-stone of the public safety; they see this measure suspended for near two years—partially complied with by some of the states, rejected by one of them, and in danger on that account to be frustrated; the public embarrassments every day increasing; the dissatisfaction of the army growing more serious, the other creditors of the public clamoring for justice—both, irritated by the delay of measures for their present relief or future security; the hopes of our enemies encouraged to protract the war—the zeal of our friends depressed by an appearance of remissness and want of exertion on our part—congress harassed, the national character suffering, and the national safety at the mercy of events.”

Resolutions were appended to this report giving the first public pledge of a determination to establish a SINKING FUND.\*

On the following day, in pursuance of another report from Hamilton, the deputation from Rhode Island was directed to proceed as soon as possible.

While these efforts were made, a publication appeared

\* Dec 16th—Whereas it is essential to justice and to the preservation of public credit, that whenever a nation is obliged by the exigencies of public affairs to contract a debt, proper funds should be established, not only for paying the annual value or interest of the same, but for discharging the principal within a reasonable period, by which a nation may avoid the evils of an excessive accumulation of debt. Therefore resolved, That whenever the nett produce of any funds recommended by congress and granted by the states, for funding the debt already contracted, or for procuring further loans for the support of the war, shall exceed the sum requisite for paying the interest of the whole amount of the national debt which these states may owe at the termination of the present war, the surplus of such grants shall form a sinking fund, to be inviolably appropriated to the payment of the principal of the said debt, and shall on no account be diverted to any other purpose.—

in a Boston gazette, which gave a false view of the state of the negotiations for foreign loans, and intimated that the danger to be apprehended was not embarrassment for want of funds, but from contracting too large a debt. This misrepresentation tended to impede all the exertions to obtain a grant of permanent funds. After some inquiry, Howell, a member from Rhode Island, avowed himself the author of it, and made a motion braving the opinion of congress, which was entered upon the journal.

Aware of the importance of an official declaration of its falsity, Hamilton offered a resolution, which was seconded by Carroll, that congress having, in respect to the articles of the confederation, admitted on its journals an entry of a motion of Mr. Howell highly derogatory to the dignity and honour of the United States, that a committee should be appointed to report the measures respecting it. They reported that a *true* state of the negotiations should be transmitted to the governor of Rhode Island.

The preceding address to that state, shows Hamilton's purpose to endeavour to establish an adequate and comprehensive system of finance. This would have provided for the state emissions, and state debts incurred for the common defence. An estimate which he had submitted to the superintendent of finance, showed that the probable receipts from the impost would be insufficient. It was necessary to increase the revenue; but before the assent of the states could be obtained to this increase, discontents

And in order that the several states may have proper information of the state of their finances, it is further resolved, That as soon as the public debt can be liquidated, each state be annually furnished with the amount thereof, and of the interest thereon, and also of the proceeds and disposition of the funds provided for the redemption thereof That the faith of the United States be pledged for the observance of the foregoing resolution, and that if any state shall think it necessary to make it a condition of their grants, the same will be considered by congress as consistent with their resolution of the 3d of February, seventeen hundred and eighty-one

which existed as to late requisitions were to be removed. With these views, he moved the appointment of a committee to report what further provision should be made "for discharging the interest on the loan-office certificates and other liquidated debts, and to revise the requisitions of the preceding and present year, and to report whether the same ought to be continued or altered."

The principal cause of the frequent collisions between the states as to the apportionment of the public burdens, proceeded from the failure to carry into effect the rule of the confederation as to the ratio of contribution. That rule contemplated an actual specific valuation of the lands in each state granted and surveyed, with the buildings and improvements. Objectionable as the rule was, the federal articles had prescribed it. Feeling the obligation of an effort to act upon it, Hamilton, on the sixth of January, offered a resolution in "order to enable congress to form an *eventual* plan towards carrying into execution" this article of the confederation. His view was, that this valuation should be made by commissioners appointed by and acting under the authority of the United States upon uniform principles. This resolution, together with those of the sixteenth of December, was referred to a committee composed of a member from each state.

The following day the house took up another subject connected with the fulfilment of the public faith. The large amount of old continental bills held in the New-England states, they having furnished the principal supplies, created a strong interest in that part of the union that some provision should be made for their redemption. A memorial having this object had been presented to the previous congress, which was referred to a grand committee of that body. This committee reported that specie certificates should be issued for these bills when paid into the hands of the commissioners appointed to

settle the accounts of the several states, and of individuals thereof, to bear an interest of six per cent. from their date, and to be provided for as other debts, if brought in prior to the expiration of the year seventeen hundred and eighty-three. It also proposed that the states which had not sunk the proportions of the continental money assigned to them, be charged with the deficiency at the prescribed rate. The rate was left in blank, to be filled up by the house.

The recent pledge introduced by Hamilton, of a determination to provide for the whole debt, probably induced Massachusetts to call up this report, in the hope that these bills would be embraced in such provision. Much opposition existed in the southern states to any redemption of these emissions.

When this report was offered for consideration, North Carolina moved its postponement. This motion being lost, a proposition was offered, that it be recommended to the several states to redeem their quotas of the old bills upon principles consonant "with the most substantial justice." This proposition also failed; and it being thus admitted, if redeemed at all, that they were a national charge, Hamilton moved "that the blank in the report be filled with the word 'forty,'" the rate of depreciation congress had established, but which composition he had censured as a violation of the public faith. This motion was rejected. A subsequent effort was made to fix the ratio at one for seventy-five, which was also rejected, some votes being against it as an inexpedient departure from the stipulated rate; others, because hostile to any provision.\* The effort to redeem them was abandoned.

\* The following statement is found in the report of the debates on this subject, Madison Papers, vol 1, page 226, by James Madison

"December 7th.—No congress. The grand committee met again on the business of the old paper emissions, and agreed to the plan reported by the sub-committee in pursuance of Mr Fitzsimmons's motion, viz.: that the out-

While the preliminary measures of finance were depending, the dangers which had been apprehended from the discontents of the army occurred, and Hamilton's ser-

standing bills should be taken up, and certificates issued in place thereof at the rate of one real dollar for ——— nominal ones, and that the surpluses redeemed by particular states should be credited to them at the same rate Mr Canioll alone dissented to the plan, alleging that a law of Maryland was adverse to it, which he considered as equipollent to an instruction For filling up the blank, several rates were proposed. First, 1 for 40, on which the votes were, *no*, except Mr Howell Second, 1 for 75, *no*, Mr White and Mr Howell, *aye* Thurd, 1 for 100, *no*, Mr Hamilton and Mr Fitzsummons, *aye* Fourth, 1 for 150, *no*, Mr Fitzsummons, *aye* The reasons urged in favour of 1 for 40, were—first, an adherence to public faith, secondly, that the depreciation of the certificates would reduce the rate sufficiently low, they being now negotiated at the rate of 3 or 4 for 1 The reason for 1 for 75, was, that the bills passed at that rate when they were called in, in the eastern states, for 1 for 100, that *as popular ideas were opposed to the stipulated rate*, and as adopting the current rate might hurt the credit of other securities, which derived their value from an opinion that they would be *strictly* redeemed, it was best to take an *arbitrary rate*, leaning to the side of liberality, for 1 for 150, that this was the medium depreciation when the circulation ceased The opposition to these several rates came from the southern delegates, in some of whose states none, in others but little, had been redeemed, and in all of which the depreciation had been much greater On this side it was observed by Mr Madison, that the states which had redeemed a surplus, or even their quotas, had not done it within the period fixed by congress, but in the last stages of depreciation, and, in a great degree, even after the money had ceased to circulate, that since the supposed cessation, the money had generally changed hands at a value far below any rate that had been named, that the principle established by the plan of the 18th of March, 1780, with respect to the money in question, was, that the holder of it should receive the value at which it was current, and at which it was presumed he had received it, that a different rule adopted with regard to the same money in different stages of its downfall, would give general dissatisfaction The committee adjourned without coming to any decision "

On the 18th March, 1780, congress resolved that the bills in circulation should be redeemed at the rate of 40 for 1 Spanish milled dollar To allow a less equivalent, was a breach of the public faith The object of the foregoing statement is, to represent Hamilton as voting in favour of this breach of faith; but the statement is incorrect in all its parts

The transaction is represented as having occurred on the 7th of December,

vices were placed in a conspicuous light by his efforts to render justice to his fellow-soldiers.

Near the close of the preceding autumn, the main army,

and not on the 7th of January, the actual date of the occurrence as appears by the journals, vol 4, page 141 To give colour to this alteration of the date, it is represented as having taken place in grand committee, and not in the house

That grand committee was elected by the preceding congress,\* and was composed of Duane, Dyer, Fitzsimmons, Gilman, Hanson, Howell, Jackson, Lee, McKean, Telfair, Williamson, and Witherspoon *Hamilton was not a member of it*; consequently, he could not have given the vote imputed to him by Madison, nor any other vote

The report of this committee came before congress on the 7th January, the amount in blank, a motion was made to *postpone* its consideration Hamilton and Madison both voted *against* the motion for a postponement, which was lost. It was then moved that the several *states* should redeem on principles "of the most substantial justice" Hamilton and Madison both voted *against* this motion. Hamilton then moved to fill up the report with 40 for 1—Madison voted *against it*; a motion was then made of 75 for 1—Hamilton and Madison both against it No vote is given of 100 or of 150 for 1, as stated by Madison

The purport of these several votes was this In voting *not* to postpone, Hamilton evinced his determination to fulfil a public engagement In voting *not to refer* the provision to the *states*, he voted from the same motive In proposing 40 for 1, he voted from the same motive In voting against 75 for 1, he voted upon the consideration stated by him in his letter to Robert Morris, previously referred to, vol. 1, page 360 —"I have chosen the resolution of March, '80, as a standard, we ought not on any account to raise the value of the old paper higher than 40 to 1, for this will give it about the degree of value that is most salutary, at the same time that it would avoid a *second breach of faith*, which would cause a violent death to all future credit." He also voted on the 21st December previous, to certify certain pledges as "debts, at 1 dollar in specie for every 40 dollars of such pledges," in which Madison concurred

Madison voting in the negative throughout, voted not to redeem the continental paper at any rate; assigning as one reason, "that the principle established by the plan of the 18th March, 1780, was, that the holder should receive the value at which it was current, and at which it was presumed he had received it, and that the same principle ought to govern in the different stages of its downfall. This was not the fact; 40 for 1, was the stipulated rate, below which no depreciation was to take place

which had previously been moved to Verplank's Point, took up their winter-quarters among the woody hills in the vicinity of Newburgh, a position in every relation the most eligible that could have been selected. Their wants, and the near approach of peace, increased their anxiety for an adjustment of their accounts, and led the officers to look with extreme solicitude to the establishment of substantial funds, adequate to the discharge of their half-pay as it should become due.

Alarmed by information that there was a large party hostile to their claims, combinations among them to resign in a body, at stated periods, began to be formed. But they were diverted from this purpose, and induced to petition congress.

In their petition they stated that shadows had been offered to them, while the substance had been gleaned by others; that they had borne all that they could bear; that their property was expended, their private resources at an end, and their friends wearied out and disgusted with their incessant applications; that the soldiers had not received more than one-fifth of their rations; that the arrearages for their clothing in seventeen hundred and seventy-seven, were paid in continental money, when the dollar was worth only four pence, and that the accounts for the subsequent years were unliquidated. After this

Not only is a reason that did not exist assigned for his own vote, but one inconsistent with integrity is imputed to Hamilton for a vote *he did not* give. Madison gave the vote Hamilton refused to give. The reason stated by Madison to have been "urged in favour of" 40 for 1, the rate Hamilton proposed, was, "an adherence to public faith" The reason imputed to Hamilton by Madison for voting for 100 for 1, which Hamilton did *not* vote for, was, that as *popular* ideas were opposed to the *stipulated* rate, and as adopting the current rate might hurt the credit of other securities, which derived their value from an opinion that they would be *strictly* redeemed, it was best to take an *arbitrary* rate leaning to the side of popularity." What must be thought of such statements?

recapitulation of their wrongs, having asked for a supply of money as soon as possible, they urged an immediate adjustment of their dues; that a part should be paid, and the remainder put on such a footing as would restore cheerfulness to the army, revive confidence in the justice and generosity of its constituents, and contribute to the very desirable effect of re-establishing public credit. Adverting, in fine, to the odious light in which the persons entitled to half-pay were viewed, they proposed, in order to prevent altercations and distinctions, to commute the half-pay for full pay for a certain number of years, or for a sum in gross.

To attain these objects, they appointed General McDougal, Colonels Brooks and Ogden, a committee of correspondence to repair to Philadelphia. The state of opinion in congress was not such as to inspire confidence. The jealous spirit which withheld from the confederation the only means of restoring the public credit, and which, on the return of peace, was not unwilling to abandon or to dissolve the union, had been strongly evinced as to the claims of the army.

Aware of the difficulties to be encountered, it has been seen that Hamilton had been foremost to induce the refusal of all partial favours to any particular body of officers, had urged the necessity of avoiding discriminations between different classes of creditors, and had succeeded in postponing various applications for relief, the grant of which must have engendered discontent.

The army memorial was referred to a committee of which he was chairman, and on the twenty-fifth of January a report was made by him.

It comprehended five articles:—Present pay—a settlement of accounts of the arrearages of pay, and *security* for what was due—a commutation of the half-pay for an equivalent in gross—a settlement of the accounts of defi-



ciencies of rations and compensation, and a similar settlement as to clothing and compensation.

As to the pay, this report directed the superintendent of finance to make the payment requested, as soon as the state of the finances would permit; as to the accounts, that the states be called upon to complete the settlements with their respective levies to the first of August, seventeen hundred and eighty,\* and that settlement from that period be made at the office of finance. As to security, it declared that the troops of the United States, in common with all their creditors, have an undoubted right to expect such security, and that congress will make every effort in their power to obtain from the respective states substantial funds, adequate to the object of funding the whole debt of the United States, and will enter upon an immediate and full consideration of the nature of such funds, and the most likely mode of obtaining them.

The remaining articles were referred to a sub-committee of which Hamilton was a member; and after the interval

\* By resolution of 12th August, 1780, the states were recommended to make compensation for the depreciation of their pay; and from the first of that month it was declared that the army should receive it in the new emissions. It was therefore an express stipulation. Yet Madison states, "a compromise was proposed by Hamilton, by substituting the last day of December, 1780," for the first of August, in compliance with an objection of the eastern states.

The same principle was involved with that in the pledge of \$40 for 1, of the old emission, as to which the charge has been disproved. It is seen that Hamilton's report was in conformity with this stipulation. How the change to December occurred, does not appear; but the journals show that Hamilton voted to reinstate August.\* As this statement rests solely upon the evidence of Madison, and is neither in accordance with the report nor with this vote, its probability is more than questionable—1 Mad. 278-9, 280.

of a day, that part of this report which promised substantial and adequate funds, was considered.

The earliest known opinions of Hamilton indicate his conviction that the command of the revenue should be vested in congress, and that it should have the collection of it. He had stated in "the *Continentalist*,"\* as "the great defect of the confederation, that it gives the United States no property, or in other words, no revenue, nor the means of acquiring it inherent in themselves, and independent on the temporary pleasure of the different members."—"As power without revenue, in a political society, was a name; while congress," he then said, "continue altogether dependent on the occasional grants of the several states, for the means of defraying the expenses of the federal government, it can neither have dignity, vigour, nor credit. Credit supposes specific and permanent funds for the punctual payment of interest, with a moral certainty of the final redemption of the principal. This credit being to be procured through congress, the funds ought to be provided, declared, and vested in them. Had we begun the practice of funding four years ago, we should have avoided that depreciation of the currency, which has been as pernicious to the morals as to the credit of the nation." It has been seen that he at the same time expressed the opinion, that congress should have the appointment "of all officers of the customs, collectors of taxes, and military officers of every rank, so as to create in the interior of each state a mass of influence in favour of the federal government."

The period had now arrived when he was enabled, personally, to propose the adoption of a measure which he had long contemplated—the establishment of a permanent national revenue. Unfortunately, on the day† when the

\* August 4, 1781—No 4.

† Jan 27.

discussion of this subject commenced, the delegates from Virginia laid before congress an act of their legislature, repealing her grant of the power to raise an impost; a repeal not dictated by temporary considerations, but manifesting a decided repugnance to the supremacy of the national legislature over any part of the revenue.

It declared, "that the permitting any power other than the general assembly of this commonwealth, to levy duties or taxes upon the citizens of this state, within the same, is injurious to its sovereignty, may prove destructive of the rights and liberty of this people, and so far as congress might exercise the same, is contravening the spirit of the confederation." Unpropitious as this procedure was, no other resource existed, and the debate proceeded in a committee on "permanent funds."

The first question to be decided was, whether if funds were provided they were to be collected by the states, or, as Hamilton had previously urged, should depend on "a single will." With a view to its decision, he offered the following declaratory resolution:—"That it is the opinion of congress that complete justice cannot be done to the creditors of the United States, nor the restoration of public credit be effected, nor the future exigencies of the war be provided for, but by the establishment of permanent and adequate funds, to operate generally throughout the United States, *to be collected by congress.*"

The petition of the officers of the army had been heard and answered; the memorial of the other public creditors had not been replied to.

After the late act of Virginia repealing the impost, it was particularly important that they should receive a similar pledge of ultimate justice. Prompted by this consideration, immediately after the introduction of this important resolution, Hamilton presented a report on the memorial of Pennsylvania respecting the debts due to her

citizens. This report stated, " that any attempts to pay any of the past debts, would form so heavy a deduction from the greatest revenue that could be raised as would totally obstruct all present service, and that any present provision should be confined to the interest of the public debts. That such provision would offer eventual relief to the public creditors, and enable them to support their share of the public burdens without appropriating the whole revenue which can be drawn from the people to a payment of debts, and leaving thereby the public service unprovided for, which would involve the ruin of all ranks, creditors and others. That congress were and had long been deeply impressed with the absolute necessity that speedy and effectual measures should be taken, first to liquidate and ascertain the public debts, and then to secure the payment of the interest until the principal could be discharged. Acts of congress were referred to as evidence of this assertion. He added, that after a delay of two years, Rhode Island had entirely refused its concurrence to the impost, that Virginia had withdrawn its assent once given, and that a third state had returned no answer.

The inability of congress to perform its engagements, was stated to have resulted from the defective compliances of the states during the war. Of the last requisition for eight millions, only four hundred and twenty thousand dollars had been collected. The proceeds of the foreign loans\* were stated, showing an available balance a little

\* In vol 1, page 273, of Madison's Debates, this passage is found —

" In a late report, which had been drawn up by Mr Hamilton, and made to congress, in answer to a memorial from the legislature of Pennsylvania, among other things showing the impossibility congress had been under of paying their creditors, it was observed, that the aid afforded by the court of France, had been appropriated by that court, at the time, to the immediate use of the army This clause was objected to as unnecessary, and as dishonourable to congress. The fact also was controverted Mr. Hamilton

exceeding eight hundred thousand dollars ; while to feed, clothe, and pay the army, required nearly six millions.

The whole sum within the command of congress, was

and Mr Fitzsimmons *justified* the *expediency* of retaining it, in order to justify congress the more explicitly in failing to fulfil their engagements to the public creditors Mr Wilson and Madison proposed to strike out the words ‘ appropriated by France,’ and substitute the words ‘ applied by congress to the immediate and necessary support of the army ’ This proposition would have been readily approved, had it not appeared on examination, that in one or two small instances, and particularly in the payment of the balance due to Arthur Lee, Esq , other applications had been made of the aid in question The report was finally recommitted ”

This is no less than a charge of stating an untruth, and justifying it on the score of expediency, on the part of two gentlemen whose probity never was suspected, and for the motive of *justifying congress* with the public creditors This minute is of the 24th of January It speaks of a *late* report made to congress The journal of that date does not refer to this report, but on the *thirtieth* of January it is given in full, as having been “ agreed to as follows ” A reason assigned by Madison why the clause thus objected to was not stricken out, is, that there had been a diversion of the money in one or two small instances He adds, that it was recommitted But if these instances prevented this clause being expunged, if it had been originally in the report, it must necessarily have been retained On referring to this report, “ agreed to ” by congress, *no such clause can be found* Its language is—“ But according to the best accounts which can be obtained, the anticipations made in the funds for the year 1782 amounted, at the close of 1781, to four millions of livres *For the service of that year*, his most christian majesty lent the United States 6,000,000 *livres* ”—4 J C 155

But if it be assumed that the clause was there originally, and was stricken out, the charge is *unsupported* The journals, page 202, contain the papers which Madison as chairman of a committee reported, and referred to in an address of which he was the author One of these papers, No. IV , is a letter from the French ambassador at Philadelphia, dated March 15, 1783 It commences thus—“ Sir I have the satisfaction to inform you, that his majesty procures for the United States a loan of *six millions*, to be employed in the war department during the course of the current year ”—“ The Count de Vergennes informs me, sir, that the *six millions* are lent to the United States in the same manner, and under the same conditions, with the sum which was lent last year ”—“ I have had the honour to inform you, sir, that this money is lent to the United States to enable them to carry on the war. The wisdom of congress will determine according to circum-

little more than a million and a half of dollars ; a sum insufficient to pay the interest then due on the public debts. " Yet," Hamilton remarked, " notwithstanding the discouraging obstacles they have hitherto encountered, they conceive it a duty to themselves and to their constituents, to persevere in their intentions to renew and extend their endeavours to procure the establishment of revenues equal to the purpose of funding all the debts of the United States ; and they think it proper to inform the assembly of Pennsylvania, that this subject is now before them under solemn deliberation, and that her ready and early compliance with the recommendation of (an impost) assures congress of the vigorous support of that state."

Soon after this pledge was given, a report as to the mode of valuing the lands was taken into consideration.

This report proposed that the states should pass laws forming themselves into districts, and should appoint commissioners to estimate the value of their lands ; which estimate, if approved by congress, was to determine the requisitions to be made.

Convinced that no efficient plan would be adopted from the predominance of state jealousies, and regarding the contemplated mode as involving inequalities and controversy, Hamilton moved to postpone the valuation. He assigned as reasons, " the great expense of it, to which the finances were then inadequate, and that in a matter so

stances on the manner of effecting that important object, and of *compelling the enemy*, by *joint efforts*, to conclude a solid and permanent peace "

That such was the sole object of this loan made by France, then under great pecuniary pressure, is obvious. Already a creditor for a large amount, it cannot be supposed that France would have made an additional loan to the United States to pay their domestic creditors. A declaration such as that which Madison represents Wilson as concurring with him in endeavouring to substitute, would have been to declare that congress had *violated* their pledge to France in applying this loan to the immediate use of the army—the express use for which the loan was granted.

fundamental in the confederation, it was essential to the harmony and welfare of the United States, that it should be carried into effect with great care, circumspection, and impartiality, and that a short delay would be much less pernicious than a defective execution ”

After thus urging that the attempt should be deferred, he pledged congress to proceed to an *accurate* valuation of the land by commissioners, *appointed by them*, and *acting under their authority*, upon principles uniform throughout the United States ; that when this valuation is complete, congress will finally adjust the accounts of the United States with the states separately, agreeably to that standard, making equitable abatements to such as have been more immediate sufferers by the war : that in the mean time they would adhere, in the temporary adjustment of these accounts, to the proportions established by the requisitions of congress ; and with a view to an *eventual plan*, he requested the states to transmit to them the valuations they had made, with an explanation of the principles on which they had been made.

This motion, though supported by a majority of members, was lost in a vote by states, and the plan reported was rejected.

The course of their proceedings gave small prospect of any salutary results. The officers were urgently pressing their claims. The justice of those claims was not to be questioned. The terms of commutation offered by the army, could not be excepted to. The claimants were suffering. They had received nothing but assurances, and they had reason to believe that, on the part of many, those assurances were deceptive. There was danger. Hamilton felt it, and after due reflection, he unbosomed his apprehensions to the commander-in-chief.

## HAMILTON TO WASHINGTON.

Philadelphia, Feb 7, 1783

SIR,

Flattering myself that your knowledge of me will induce you to receive the observations I make as dictated by a regard to the public good, I take the liberty to suggest to you my ideas on some matters of delicacy and importance. I view the present juncture as a very interesting one. I need not observe how far the temper and situation of the army make it so. The state of our finances was perhaps never more critical. I am under injunctions which will not permit me to disclose some facts that would at once demonstrate this position, but I think it probable you will be possessed of them through another channel.\* It is however certain that there has scarcely been a period of the revolution which called more for wisdom and decision in congress. Unfortunately for us, we are a body not governed by reason or foresight, but by circumstances. It is probable we shall not take the proper measures; and if we do not, a few months may open an embarrassing scene. This will be the case, whether we have peace or a continuance of the war.

If the war continues, it would seem that the army must in June subsist itself to *defend the country*; if peace should take place, it *will* subsist itself to *procure justice to itself*. It appears to be a prevailing opinion in the army, that the disposition to recompense their services will cease with the necessity for them, and that if they once lay down their arms, they part with the means of obtaining justice.

It is to be lamented that appearances afford too much ground for their distrust.

\* Probably from the superintendent of finance.



It becomes a serious inquiry, What is the true line of policy? The claims of the army, urged with moderation, but with firmness, may operate on those weak minds which are influenced by their apprehensions more than by their judgments, so as to produce a concurrence in the measures which the exigencies of affairs demand. They may add weight to the applications of congress to the several states. So far a useful turn may be given to them. But the difficulty will be to keep a *complaining* and *suffering army* within the bounds of moderation.

This your excellency's influence must effect. In order to it, it will be advisable not to discountenance their endeavours to procure redress, but rather, by the intervention of confidential and prudent persons, to *take the direction of them*. This, however, must not appear. It is of moment to the public tranquillity that your excellency should preserve the confidence of the army, without losing that of the people. This will enable you in case of extremity to guide the torrent, and to bring order, perhaps even good, out of confusion. 'Tis a part that requires address, but 'tis one which your own situation as well as the welfare of the community points out.

I will not conceal from your excellency a truth which it is necessary you should know. An idea is propagated in the army, that delicacy carried to an extreme prevents your espousing its interests with sufficient warmth. The falsehood of this opinion no one can be better acquainted with than myself; but it is not the less mischievous for being false. Its tendency is to impair that influence which you may exert with advantage, should any commotions unhappily ensue, to moderate the pretensions of the army, and make their conduct correspond with their duty.

The great *desideratum* at present is the establishment of general funds, which alone can do justice to the creditors of the United States, (of whom the army forms the

most meritorious class,) restore public credit, and supply the future wants of government. This is the object of all men of sense, in this the influence of the army, properly directed, may co-operate.

The intimations I have thrown out, will suffice to give your excellency a proper conception of my sentiments: you will judge of their reasonableness or fallacy; but I persuade myself you will do justice to my motives.

General Knox has the confidence of the army, and is a man of sense; I think he may be safely made use of. Situated as I am, your excellency will feel the confidential nature of these observations.

A few days after writing this letter,\* Hamilton proposed a resolution, which was passed, that "the commander-in-chief be informed that congress are always happy to receive his sentiments on the political and military affairs of these states, the utility of which they have on so many occasions experienced." It also stated "the probability of peace," and directed the secretary of foreign affairs "to make a confidential communication to him of the state of the negotiations for peace when the last advices were received."

The day after the date of this letter, the discussion of the mode of ascertaining the quotas of the states was resumed. Various propositions were made, at different times, until the seventeenth of February, when a plan was adopted, five members dissenting †

By this plan, the legislature of each state was required to take the most effectual measures to obtain a just and accurate account of the quantity of its land granted or surveyed, of the number of buildings, distinguishing dwellings from others, and of the number of white and black inhabitants. These returns were to be examined by a

\* Feb. 20.

† Hamilton, Madison, Carroll, Floyd, Lee.

grand committee of congress, nine of whom concurring, were to make an estimate of the value of the granted or surveyed lands, and of the buildings or improvements, to be approved or rejected by that body. This estimate was to be the rule of apportioning among the states the quotas to be paid into the continental treasury, and also of adjusting all accounts between the United States and the individual states for previous supplies.

As this rule, if strictly adhered to, would charge the states, which had been the theatres of war, for past supplies according to their future ability, when in an entire condition, and might operate very unequally upon New-York, it has been seen that Hamilton embraced in his resolution, for an eventual valuation, a recommendation that the states should vest congress with a power of making equitable abatements in favour of such as had been more immediate sufferers by the war.

This motion was in accordance with a recommendation of the previous congress, that in a final settlement of the expenses of the war to be borne by each state, they should be authorized to assume and adopt such principles, as from the particular circumstances of the several states at different periods might appear just and equitable. It was committed, but as Virginia had disagreed to that recommendation, a committee reported against it. Hamilton subsequently again brought forward this proposition in a different form. It was a declaratory resolution by congress that they would make such abatements.

Though admitted to be within the spirit of the confederation, a postponement was moved; but with a view to defeat it, it was considered and rejected.\*

\* In vol 1, page 362, Madison Papers, Madison represents himself as being in favour of "the abatements proposed by Hamilton"—and in page 418, as offering an amendment to Hamilton's resolution for which his reasons are

The importance of this question to the interests of the community he represented, and the course which he had taken in reference to it, induced Hamilton to address a letter to the governor of New-York.

"I enclose," he said, "for the information of the legislature, the proceedings upon it in different stages, by which they will see the part I have acted. But as I was ultimately left in a small minority, I think it my duty to explain the motives upon which my opposition to the general sense of the house was grounded. I am of opinion, that the article of confederation itself was ill-judged. In the first place, I do not believe there is any general representative of the wealth of a nation, the criterion of its ability to pay taxes. There are only two that can be thought of—*land* and *numbers*. The revenues of the United Provinces, general and particular, were computed before the present war at more than half as much as those of Great Britain. The extent of their territory is not one fourth part as great; their population, less than a third.

"The comparison is still more striking between those provinces and the Swiss cantons, in both of which, extent of territory and population are nearly the same; and yet, the revenues of the former are five times as large as those of the latter; nor could any efforts of taxation bring them to any thing like a level.

"In both cases, the advantages for agriculture are superior in those countries which afford least revenue in proportion. I have selected these examples because they are most familiar; but whoever will extend the comparison between the different nations of the world, will perceive that the position I have laid down is supported by universal experience.

stated On the 4th of March, he voted, in common with all the other Virginia members, first to postpone the consideration of this resolution, and then to reject it.—4 J C 170

\* February 24, 1783.

“The truth is, the ability of a country to pay taxes, depends on infinite combinations of physical and moral causes, which can never be accommodated to any general rule ; climate, soil, productions, advantages for navigation, government, genius of the people, progress of arts, and industry, and an endless variety of circumstances. The diversities are sufficiently great in these states to make an infinite difference in their relative wealth, the proportion of which can never be found by any common measure whatever.

“The only possible way, then, of making them contribute to the general expense in an equal proportion to their means, is by *general taxes imposed under continental authority*.

“In this mode, there would no doubt be inequalities, and for a considerable time material ones ; but experience, and the constant operation of a general interest, which, by the very collision of particular interests, must in the main prevail in a continental deliberative body, would at length correct those inequalities, and balance one tax that should bear hard upon one state, by another that should have a proportional weight in others. This idea, however, was not at the period of framing the confederation, and is not yet agreeable to the spirit of the times. To futurity we must leave the discovery how far this spirit is wise or foolish. One thing only is now certain, that congress, having the discretionary power of determining the quantum of money to be paid into the general treasury towards defraying the common expenses, have in effect the constitutional power of general taxation. The restraints upon the exercise of this power amount to the perpetuating a rule for fixing the proportions, which must of necessity produce inequality, and by refusing the fœderal government a power of specific taxation and of collection, without substituting any other adequate means of coercion, do in fact leave the compliance with continental requisitions to the goodwill of the respective states. Inequality is inherent in the

theory of the confederation ; and in the practice, that inequality must increase in proportion to the honesty or dishonesty of the component parts. This vice will either in its consequences reform the federal constitution, or dissolve it.

“ If a general standard must be fixed, *numbers* were preferable to land. Modes might be devised to ascertain the former with tolerable precision ; but I am persuaded, the experiment will prove that the value of all the land, in each state, cannot be ascertained with any thing like exactness. Both these measures have the common disadvantage of being no equal representative of the wealth of the people ; but one is much more simple, definite, and certain than the other.

“ I have indulged myself in these remarks, to show that I have little expectation of success from any mode of carrying the article in question into execution upon equitable principles. I owe it, however, to myself to declare, that my opposition did not arise from this source. The confederation has pointed out this mode, and though I would heartily join in a *representation* of the difficulties (of which every man of sense must be sensible on examination) that occur in the execution of the plan, to induce the states to consent to a change ; yet as this was not the disposition of a majority of congress, I would have assented to any mode of attempting it, which was not either obviously mischievous or impracticable.

“ The first plan proposed, as your excellency will see, was an actual valuation of each state by itself. This was evidently making the interested party judge in his own cause. Those who have seen the operation of this principle between the counties in the same state, and the districts in the same county, cannot doubt a moment that the valuations on this plan would have been altogether unequal and unjust. Without supposing more liberality in one state than another, the degree of care, judgment, and

method, employed in the execution, would alone make extreme differences in the results.

“This mode had also the further inconvenience of awakening all the jealousies of the several states against each other. Each would suspect that its neighbour had favoured itself, whether the partiality appeared or not. It would be impossible to silence these distrusts, and to make the states sit down satisfied with the justice of each other. Every new requisition for money, would be a new signal for discussion and clamour, and the seeds of disunion, already sown too thick, would be not a little multiplied.

“To guard against these evils, the plan proposes a revision by congress; but it is easy to be seen, that such a power could not be exercised. Should any states return defective valuations, it would be difficult to find sufficient evidence to determine them such; to alter would not be admissible, for congress could have no data which could be presumed equivalent to those which must have governed the judgment of commissioners under oath, on an actual view of the premises. To do either this or to reject, would be an impeachment of the honour of the states, which it is not probable there would be decision enough to hazard, and which, if done, could not fail to excite serious disgusts. There is a wide difference between a single state exercising such a power over its own counties, and a confederated government exercising it over sovereign states which compose the confederacy. It might also happen, that too many states would be interested in the defective valuations, to leave a sufficient number willing either to alter or to reject. These considerations prevailed to prevent the plan being adopted by a majority.

“The last plan may be less mischievous than the first, but it appears to me altogether ineffectual. The mere quantity of land granted and surveyed, with the general species of buildings upon them, can certainly be no criteria to

determine their value. The plan does not even distinguish the improved from the unimproved land, the qualities of soil, or degrees of improvement; the qualities of the houses and other buildings are entirely omitted. These, it seems, are to be judged of by the commissioners to be appointed by each state; but I am unable to conceive how any commissioner can form the least estimate of these circumstances with respect even to his own state, much less with respect to other states, which would be necessary to establish a just relative value. If even there was a distinction of improved from unimproved land, by supposing an intrinsic value in the land, and adopting general rates, something nearer the truth might be attained; but it must now be all conjecture and uncertainty.

“The number of inhabitants, distinguishing white from black, is called for. This is not only totally foreign to the confederation, but can answer no reasonable purpose. It has been said that the proportion of numbers may guide and correct the estimates; an assertion purely verbal, and which has no meaning. A judgment must first be formed of the value of the lands upon some principle. If this should be altered by the proportion of numbers, it is plain, numbers would be substituted to land.

“Another objection to this plan is, that it lets in the particular interests of the states, to operate in the returns of the quantities of land, number of buildings, and number of inhabitants. But the principle of this objection applies less forcibly here, than against the former plan.

“Whoever will consider the plain import of the eighth article of the confederation, must be convinced that it intended an *actual* and *specific* valuation of land, buildings, and improvements—not a mere *general estimate*, according to the present plan. While we insist, therefore, upon adhering to the confederation, we should do it in reality, not barely in appearance.



"Many of those who voted for this scheme, had as bad an opinion of it as myself, but they were induced to accede to it by a persuasion that some plan for the purpose was expected by the states; and that none better, in the present circumstances of the country, could be fallen upon.

"A leading rule which I have laid down for the direction of my conduct, is this.—that while I would have a just deference for the expectations of the states, I would never consent to amuse them by attempts which must either fail in the execution, or be productive of evil. I would rather incur the negative inconveniences of delay, than the positive mischiefs of injudicious expedients. A contrary conduct serves to destroy confidence in the government, the greatest misfortune that can befall a nation. There should, in my opinion, be a character of wisdom and efficiency in all the measures of the federal council, the opposite of a spirit of temporizing concession. I would have sufficient reliance on the judgments of the several states, to hope that good reasons for not attempting a thing, would be more satisfactory to them than precipitate and fruitless attempts

"My idea is, that taking it for granted the states will expect an experiment on the principle of the confederation, the best plan\* will be to make it by commissioners, appointed by congress and acting under their authority.

\* In 1 Mad 318, Madison observes—"Mr Hamilton concurred in" (his) "views, and wished the valuation to be taken up, *in order that its impracticability and futility might become manifest*" This statement is at variance with these facts. It has been seen that on the 6th January, 1783, Hamilton offered a resolution for "*an eventual valuation*" Here again, he urges an adherence to the confederation, as intending "*an actual and specific valuation*," and in notes for a speech, endorsed on a letter from Clinton, respecting Vermont, he says—"We are not to suppose that those who made the confederation, did not consider various plans"—"The states do not pay taxes, because we do not proceed according to the confederation"—"*Go according to confederation*"

Congress might, in the first instance, appoint three or more of the principal characters in each state for probity and abilities, with a power to nominate other commissioners under them in each subdivision of the state. General principles might be laid down for the regulation of their conduct, by which uniformity in the manner of conducting the business would obtain. Sanctions of such solemnity might be prescribed, and such notoriety given to every part of the transaction, that the commissioners could neither be careless nor partial without a sacrifice of reputation.

“To carry this plan, however, into effect with sufficient care and accuracy, would be a work both of time and expense; and, unfortunately, we are so pressed to find money for calls of immediate necessity, that we could not at present undertake a measure which would require so large a sum.

“To me it appears evident, that every part of a business which is of so important and universal concern, should be transacted on uniform principles, and under the direction of that body which has a common interest. In general, I regard the present moment, probably the dawn of peace, as peculiarly critical; and the measures which it shall produce, as of great importance to the future welfare of these states. I am, therefore, scrupulously cautious of assenting to such as appear to me founded on false principles.

“Your excellency will observe that the valuation of the lands is to be the standard for adjusting the accounts for past supplies, between the United States and the particular states. This, if adhered to without allowance for the circumstances of those states which have been more immediately the theatre of the war, will charge our state for the past according to its *future ability*, when in an entire condition, if the valuation should be made after we regain possession of the parts of the state now in the power of

the enemy. I have, therefore, introduced a motion for repeating the call in a more earnest manner upon the states to vest congress with a power of making equitable abatements, agreeably to the spirit of the resolution of the twentieth of February last, which few of the states have complied with. This motion has been committed. I know not what will be its fate

“Notwithstanding the opposition I have given, now the matter has been decided in congress, I hope the state will cheerfully comply with what is required. Unless each state is governed by this principle, there is an end of the union. Every state will no doubt have a right, in this case, to accompany its compliance with such remarks as it may think proper.

“After the plan was agreed upon, it was committed to be put into form, and when reported, instead of commissioners, an alteration was carried for making the estimate by a grand committee.”

“February twenty-seventh —Mr. Morris has signified to congress his resolution to resign by the first of June, if adequate funds are not by that time provided. This will be a severe stroke to our affairs. No man fit for the office will be willing to supply his place for the very reasons he resigns. 'Tis happy for us we have reason to expect a peace., I am sorry that by different accounts it appears not to have been concluded late in December.”

While this subject was under consideration, the question of providing for the public debt was again brought forward. The temper of congress led Hamilton to doubt whether its policy would be such as the interests of the nation demanded. He believed that the influence of public opinion might be beneficially exerted, and he resolved to endeavour to cause it to be felt.

It is known that the deliberations of the congress of the confederation were secret. During the earlier periods of

the revolution, this precaution in an assembly exercising not only legislative but executive powers, was absolutely necessary. But this necessity was felt by discerning men not to be the least of the evils attending a government by a single body. The salutary control of public sentiment was not felt, intrigues often prevailed over the maturest counsels, and the highest talent mourned the absence of that great support—the warm sympathies of the people. Obvious as the consequences of this secrecy were, no attempt had been made, during all the long period of the revolution, to break through it.

It remained for Hamilton to make the first effort in favour of open debate. He saw the congress sinking rapidly in public esteem, its recommendations disregarded, its resolves disobeyed, its counsels misrepresented; the fears of the timid, stimulated by the arts of the factious, viewing it as the theatre of cabals, hostile to liberty, when in fact, the jealousies of particular states prevented the exercise of those powers which were essential to the chief object of its institution—the common defence. He saw these influences at this moment unusually active, while the clamours of the public creditors and of the army were heard at their doors demanding an audience.

He had resorted in vain to private solicitation; in vain had he exerted all the powers of eloquent persuasion to induce a compliance with their just demands. The stern prejudices of New-Hampshire could not be overcome; Connecticut was not to be soothed. By those states it was intended that a most solemn pledge for a most sacred debt, the price of their independence, should be deliberately violated.

On the eighteenth of February, the day appointed to consider the proposition to raise substantial funds, a call, which Hamilton seconded, for an estimate of the principal of the liquidated and unliquidated debt, was followed by

a motion, in pursuance of instructions from Connecticut, asking an account of the names and titles of all civil and diplomatic officers, and a statement of the amount of all grants for the pay, half-pay, and gratuities, for their past services.

Hamilton felt that the honour of the nation was at stake, and that it was a question for the nation to decide. He proposed the following resolution:—"Whereas, it is the desire of congress that the motives of their deliberations and measures, (as far as they can be disclosed consistently with the public safety,) should be fully known to their constituents—therefore, resolved, That when the establishment of funds for paying the principal and interest of the public debt shall be under the consideration of this house, the doors shall be opened."

This resolution was postponed almost without a reply, for the only answer given to so important a proposition, was the remark of the delegate from Rhode Island, as to whom he had reported a vote of censure, "that if the member wishes to display his eloquence, he should address the people from the balcony."

Immediately after the defeat of this proposal, a report was made to the house by the grand committee, which contained a modification of Hamilton's resolution so as to declare the necessity of permanent and adequate funds, but omitted the provision that they should be collected by congress. In this form it passed by the votes of seven states, and, on the twenty-first of February, was referred to a special committee.\*

Congress now† resumed the consideration of the claims of the officers. The committee of which Hamilton was a member, reported that the officers then in service, and who should continue until the end of the war, should

\* Fitzsimmons, Gorham, Hamilton, Madison, Rutledge

† Feb 25

receive in commutation of their half-pay, full pay for — years, either in money, or securities at interest, giving to the lines of the respective states, and not to the individual officers, the option of accepting such commutation. This provision was extended to all officers who had retired on a promise of half-pay, and to the widows of such as should die in the service.

A motion was made to postpone this report, with a view to substitute a provision by the states, which was rejected.\* Hamilton then moved to fill the blank with five and a half years' pay, as nearer to an equivalent of full pay, on the valuations of lives; but this motion failed, and the commutation was established at five years' full pay. The subject was resumed, and on the 28th of February seven states voted in favour of it. It being a question which required, by the confederation, the concurrence of nine states, the provision was not made.

Soon after this vote, Hamilton received a reply to his letter to Washington, in which will be perceived the concurrence of the commander-in-chief in the views he had suggested as to the course to be pursued, though Washington appears not to have entertained equal apprehensions of the impending commotions in the army.

Newburgh, 4th March, 1783

DEAR SIR,

I have received your favour of February; I thank you for the information and observations it has conveyed to me. I shall always think myself obliged by a free communication of sentiments, and have often thought, (but suppose I thought wrong, as it did not accord with the practice of congress,) that the public interest might be

\* All of the New England members, one from New Jersey, and one from Virginia, supported this proposition

benefited, if the commander-in-chief of the army was let more into the political and pecuniary state of our affairs than he is. Enterprises and the adoption of military and other arrangements that might be exceedingly proper in some circumstances, would be altogether improper in others.

It follows then by fair deduction, that where there is a want of information, there must be chance-medley ; and a man may be upon the brink of a precipice before he is aware of his danger, when a little foreknowledge might enable him to avoid it. But this by the by.

The hint contained in your letter, and the knowledge I have derived from the public gazettes, respecting the non-payment of taxes, contain all the information I have received of the danger that stares us in the face on account of our funds ; and so far was I from conceiving that our finances were in so deplorable a state, *at this time*, that I had imbibed ideas from some source or another, that with the prospect of a loan from Holland we should be able to rub along. To you who have seen the danger to which the army has been exposed to a political dissolution for want of subsistence, and the unhappy spirit of licentiousness which it imbibed by becoming in one or two instances its own proveditors, no observations are necessary to evince the fatal tendency of such a measure , but I shall give it as my opinion, that it would at this day be productive of civil commotions and end in blood.—Unhappy situation this ! God forbid we should be involved in it.

The predicament in which I stand, as citizen soldier, is as critical and delicate as can well be conceived. It has been the subject of many contemplative hours.

The sufferings of a complaining army on one hand, and the inability of congress and tardiness of the states on the other, are the forebodings of evil, and may be productive of events which are more to be deprecated than prevent-

ed ; but I am not without hope, if there is such a disposition shown as prudence and policy dictates to do justice, your apprehensions in case of peace are greater than there is cause for. In this, however, I may be mistaken, if those ideas which you have been informed are propagated in the army should be extensive, the source of which may be easily traced, as the old leaven, *it is said*, for I have no proof of it, is again beginning to work, under the mask of the most perfect dissimulation and apparent cordialty.

Be these things as they may, I shall pursue the same steady line of conduct which has governed me hitherto, fully convinced that the sensible and discerning part of the army cannot be unacquainted (although I never took pains to inform them) of the services I have rendered it on more occasions than one. This, and pursuing the suggestions of your letter, which I am happy to find coincides with my own practice for several months past, and which was the means of diverting the business of the army into the channel it now is, leaves me under no great apprehensions of its exceeding the bounds of reason and moderation ; notwithstanding, the prevailing sentiment in the army is, that the prospect of compensation for past services will terminate with the war.

The just claims of the army ought, and it is to be hoped will have their weight with every sensible legislature in the union, if congress point to their demands, show (if the case is so) the reasonableness of them, and the impracticability of complying without their aid. In any other point of view, it would in my opinion be impolitic to bring the army on the tapis, lest it should excite jealousy and bring on its concomitants. The states cannot, surely, be so devoid of common sense, common honesty, and common policy, as to refuse their aid on a full, clear, and candid representation of facts from congress, more especially if these should be enforced by members of their own



body, who might demonstrate what the inevitable consequences of failure must lead to. In my opinion, it is worthy of consideration how far an adjournment of congress for a few months is advisable. The delegates, in that case, if they are in unison themselves respecting the great defects of their constitution, may represent them fully and boldly to their constituents. To me, who know nothing of the business before congress, nor of the arcanum, it appears that such a measure would tend to promote the public weal; for it is clearly my opinion, unless congress have powers competent to all general purposes, that the distresses we have encountered and the blood we have spilt in the course of an eight years' war, will avail us nothing — The contents of your letter is known only to myself, and your prudence will dictate what should be done with this.

With great esteem and regard.

On the day after the date of this letter, Hamilton wrote to Washington, suggesting a plan, through a confidential person, for arresting two men of the name of Knowlton and Wells, residents of Vermont, charged with being in correspondence with the enemy. A surmise that the vote for their detection had been communicated to them by a member of congress, added to the motives for their arrest. A resolution was afterwards passed, requesting the executives of the states of New-Hampshire, Massachusetts, Connecticut, and New-York, to take measures to bring to trial the persons charged with these treasonable practices.

The deputation from the army, after an attendance on congress of nearly two months, informed it, "that nothing of any moment had been decided for them." Their letter reached the camp at the same time with the information that preliminary articles of peace had been concluded. This intelligence, hailed with delight throughout the coun-

try, gave to the army a keener sense of injury. Peace, which their valour had won, they believed would dissipate all prospect of the adjustment of their demands. Under this impression, their discontents, which had been a long time increasing, broke forth ; and at this moment of dangerous excitement, the event which Hamilton had anticipated in the preceding letter occurred.

On the tenth of March, an anonymous notice was circulated, calling a meeting of the general and field-officers and of a commissioned officer of each company, on the following day, "to consider what measures, if any, should be taken to obtain that redress of grievances which they seem to have solicited in vain."

At the same moment another paper without a signature was clandestinely circulated, addressed to the angered feelings of the officers.

After remarking that "he had till lately, very lately, believed in the justice of his country," the writer appealed to the resentment of the army, and asked—Is it "a country willing to redress your wrongs, cherish your worth, and reward your services ? Is this the case ? Or is it rather a country that tramples upon your rights, disdains your cries, and insults your distresses ? If this be then your treatment while the swords you wear are necessary for the defence of America, what have you to expect from peace, when your voice shall sink, and your strength dissipate by division ?—when those very swords, the instruments and companions of your glory, shall be taken from your sides, and no remaining mark of military distinction left, but your wants, infirmities, and scars ?"—"If your spirits should revolt at this ; if you have sense enough to discover and spirit sufficient to oppose TYRANNY, whatever garb it may assume, —if you have yet learned to discriminate between a *people* and a *cause*, between *men* and *principles*—awake, at-

tend to your situation, and *redress yourselves* ! If the present moment be lost, every future effort is in vain, and your *threats* then, will be as empty as your entreaties now. I would advise you, therefore, to come to some final opinion upon what you can bear and what you can suffer. If your determination be in any proportion to your wrongs, carry your appeal from the JUSTICE to the FEARS of government—change the milk-and-water style of your last memorial—assume a bolder tone, decent, but lively, spirited, and determined ; and—*suspect the Man, who would advise to more moderation and longer forbearance*” “That in any political event, the army has its alternative—if peace, that nothing shall separate them from their arms but death ; if war, that, courting the auspices and inviting the direction of their illustrious leader, they will retire to some unsettled country, smile in their turn, and “mock when their fear cometh on.” “But were their requests complied with—in war, they would follow the standard of congress to the field ; and when it came to an end, would withdraw into the shade, and give the world another subject of wonder and applause—an army, victorious over its enemies, victorious over itself.”

To prevent any intemperate or dangerous resolutions being taken at this perilous moment, while their passions were all inflamed, Washington the following morning issued a general order disapproving “these disorderly proceedings,” and convening the officers on the 15th of March, to exercise a “mature deliberation.”

The evening of the day on which this order was issued, a second anonymous address was circulated. In this paper, after urging that “suspicion, detestable as it is in private life, is the loveliest trait of political characters,” the writer artfully suggests that the general order of Washington ought to be deemed an approval of his previous address, “as giving system to their proceedings and

stability to their resolves, and furnishing a new motive for that *energy* which had been recommended."

This insidious attempt to keep alive the irritation of the army, and prepare them for violent measures, it required all the address and the influence of the commander-in-chief to parry. He at this moment unbosomed himself to Hamilton, indicating that he had adopted the wise course suggested to him, that "of taking the direction of the measures to procure redress."

Newburgh, March 12th, 1783

DEAR SIR,

When I wrote to you last, we were in a state of tranquillity, but after the arrival of a certain gentleman, who shall be nameless at present, from Philadelphia, a storm very suddenly arose, with unfavourable prognostics, which, though diverted for a moment, is not yet blown over, nor is it in my power to point to the issue. The papers which I send officially to congress, will supersede the necessity of my remarking on the tendency of them. The notification and address both appeared at the same instant; on the day preceding the intended meeting, the first of these I got hold of the same afternoon—the other, not till the next morning.

There is something very mysterious in this business. It appears, reports have been propagated at Philadelphia, that dangerous combinations were forming in the army, and this at a time when there was not a syllable of the kind in agitation in camp.

It also appears, that upon the arrival in camp of the gentleman above alluded to, such sentiments as these were immediately circulated:—That it was universally expected the army would not disband until they had obtained justice. That the public creditors "looked upon them for redress of their own grievances, would afford them every

aid, and even join them in the field, if necessary ; that some members of congress wished the measure might take effect, in order to compel the public, particularly the delinquent states, to do justice ; with many other suggestions of a similar nature.

From this, and a variety of other considerations, it is firmly believed by *some*, the scheme was not only planned, but also digested and matured at Philadelphia ; by others, that it is the illegitimate offspring of a person in the army ; but my own opinion shall be suspended till I have better ground to found one on. The matter was managed with great art ; for as soon as the minds of the officers were thought to be prepared for the transaction, the anonymous invitations and address to the officers were put in circulation through every state line in the army. I was obliged, therefore, in order to arrest on the spot the feet that stood wavering on a tremendous precipice, to prevent the officers from being taken by surprise, while the passions were all inflamed, and to rescue them from plunging themselves into a gulf of civil horror from which there might be no receding, to issue the order of the eleventh. This was done upon the principle that it is easier to divert from a wrong, and point to a right path, than it is to recall the hasty and fatal steps which have been already taken.

It is commonly supposed, if the officers had met agreeably to the anonymous summons, with their feelings all alive, resolutions might have been formed, the consequences of which may be more easily conceived than described. Now they will have leisure to view the matter more calmly, and will act more seriously. It is to be hoped they will be induced to adopt more rational measures, and wait a while longer for a settlement of their accounts, the postponing of which appears to be the most plausible, and almost the only article of which designing

men can make an improper use, by insinuating (which they really do) that it is done with the design that peace may fake place, and prevent any adjustment of accounts which, say they, would inevitably be the case if the war were to cease to-morrow; or supposing the best, you would have to dance attendance at public offices at great distances, perhaps, and equally great expenses to obtain a settlement, which would be highly injurious, nay, ruinous to you.

This is their language. Let me beseech you therefore, my good sir, to urge this matter earnestly, and without further delay. The situation of these gentlemen, I do verily believe, is distressing beyond description. It is affirmed to me, that a large part of them have no better prospect before them than a jail, if they are turned loose without liquidation of accounts, and an assurance of that justice to which they are so worthily entitled. To prevail on the delegates of those states through whose means these difficulties occur, it may, in my opinion, with propriety be suggested to them, if any disastrous consequences should follow by reason of their delinquency, that they must be answerable to God and their country for the ineffable horrors which may be occasioned thereby.

P. S —I am this instant informed that a second address to the officers, distinguished No. 2, is thrown into circulation. The contents evidently prove, that the author is in or near camp, and that the following words, erased on the second page of this letter, ought not to have met with this treatment, viz. : “By others, it is the illegitimate offspring of a person in the army.”

On the receipt of this communication, Hamilton replied, giving a lively exhibition of his feelings and of the public affairs.

Philadelphia, March 17th, 1783.

SIR,

I am duly honoured with your excellency's letters of the fourth and twelfth instant. It is much to be regretted, though not to be wondered at, that steps of so inflammatory a tendency have been taken in the army. Your excellency has, in my opinion, acted wisely. The best way is ever, not to attempt to stem a torrent, but to divert it.

I am happy to find you coincide in opinion with me on the conduct proper to be observed by yourself. I am persuaded more and more, it is that which is most consistent with your own reputation and the public safety. Our affairs wear a most serious aspect, as well foreign as domestic. Before this gets to hand, your excellency will probably have seen the provisional articles between Great Britain and these states. It might, at first appearance, be concluded that these will be preludes to a general peace. But there are strong reasons to doubt the truth of such a conclusion. Obstacles may arise from different quarters—from the demands of Spain and Holland, from the hope in France of greater acquisitions in the east, and perhaps still more probably, from the insincerity and duplicity of Lord Shelburne, whose politics, founded in the peculiarity of his situation, as well as the character of the man, may well be suspected of insidiousness. I am really apprehensive, if peace does not take place, that the negotiations will lead to sow distrust among the allies, and weaken the force of the common league. We have, I fear, men among us, and men in trust, who have a hankering after *British connection*. We have others, whose *confidence in France savours of credulity*. The intrigues of the former, and incautiousness of the latter, may be both, though in different degrees, injurious to the Ameri-

can interest, and make it difficult for prudent men to steer a proper course.

There are delicate circumstances with respect to the late *foreign transactions*, which I am not at liberty to reveal, but which, joined to our internal disorders, follies, weaknesses, and prejudices, make this country stand upon precarious ground. Some use, perhaps, may be made of these ideas to induce moderation in the army. An opinion that this country does not stand upon a secure footing, will operate upon the patriotism of the officers against hazarding any domestic commotions. When I make these observations, I cannot forbear adding, that if no excesses take place, I shall not be sorry that ill humours have appeared. I shall not regret importunity, if temperate, from the army.

There are good resolutions in the majority of congress, but there is not sufficient wisdom or discretion. There are dangerous prejudices in the particular states, opposed to those measures which alone can give stability and prosperity to the union. There is a fatal opposition to continental views. Necessity alone can work a reform; *but how apply it, and how keep it within salutary bounds?* I fear we have been contending for a shadow. The affair of accounts I considered as having been put upon a satisfactory footing. The particular states have been required to settle 'till the first of August, '80, and the superintendent of finance has been directed to take measures for settling since that period. I shall immediately see him on the subject. We have had eight states and a half in favour of a commutation of the half-pay, for an average of five years' purchase; that is, five years' full pay, instead of half-pay for life, which, on a calculation of annuities, is nearly an equivalent. I hope this will now shortly take place. We have made considerable progress in a plan, to be recommended to the several states, for funding all of



the public debts, including those of the army; which is certainly the only way to restore public credit, and enable us to continue the war, by borrowing abroad, if it should be necessary to continue it.

I omitted mentioning to your excellency, that from European intelligence, there is great reason to believe at all events, peace or war, New-York will be evacuated in the spring. It will be a pity if any domestic disturbance should change the plans of the British court.

P. S.—Your excellency mentions, that it has been surmised the plan in agitation was formed in Philadelphia; that combinations have been talked of between the public creditors and the army, and that members of congress had encouraged the idea. This is partly true. I have myself urged in congress the propriety of uniting the influence of the public creditors, and the army as a part of them, to prevail upon the states to enter into their views. I have expressed the same sentiments out of doors. Several other members of congress have done the same. The meaning, however, of all this was, simply that congress should adopt such a plan as would embrace the relief of all the public creditors, including the army, in order that the personal influence of some, the connections of others, and a sense of justice to the army, as well as the apprehension of ill consequences, might form a mass of influence in each state in favour of the measures of congress. In this view, as I mentioned to your excellency in a former letter, I thought the discontents of the army might be turned to a good account. I am still of opinion that their earnest but respectful applications for redress will have a good effect. As to any combination of *force*, it would only be productive of the horrors of a civil war, might end in the ruin of the country, and would certainly end in the ruin of the army."

The officers assembled on the appointed day, and Gates, the second in command, whose intrigues were suspected, was called to preside. They met in an humble school-house, on an acclivity that rises from the Hudson, yet bound in fetters—for winter still maintained her sway among the mountains, which overcast the scene with their long and gloomy shadows.

All around them was rugged and drear, in unison with the stern and indignant sense of unrewarded sacrifices, broken faith, and baffled hopes, which lowered over their countenances.

Washington, who had never been greeted but with affection, was received with cold and calm respect. It appeared as though sedition had felt it necessary to commence her secret work by engendering suspicions against the Father of his country!—He arose: he felt the estrangement—he paused, and he doubted of the issue. As he uncovered his venerated head, and was about to address them from a written paper in his hand, his eye grew dim, and he uttered this pathetic, unpremeditated remark:—“Fellow-soldiers, you perceive I have not only grown gray, but blind in your service.” After commenting on the impropriety of the anonymous papers, addressed more to the feelings and passions, than to the reason and judgment of the army, he repelled the insidious imputation on himself.—“The author of the piece should have had more charity than to *mark for suspicion* the *man* who should recommend moderation and longer forbearance, or, in other words, should not think as he thinks, and act as he advises. But he had another plan in view, in which candour and liberality of sentiment have no part, and he was right to *insinuate* the darkest suspicions to effect the *blackest* designs. . . . ‘But how,’ after indicating the object of these addresses, ‘but how are the interests of the army to be promoted? The way is plain,’ says the writer,—‘If

war continues, remove into the unsettled country; there establish yourselves, and leave an ungrateful country to defend itself.' But whom are they to defend? Our wives, our children, our farms and other property, which we leave behind us? Or in the state of hostile separation, are we to take the two first, (the latter cannot be removed,) to perish in a wilderness with hunger, cold, and nakedness? If peace takes place, 'never sheathe your swords,' says he, 'until you have obtained full and ample justice.' This dreadful alternative, of either deserting our country in the extremest hour of her distress, or *turning our arms against it*, which is the apparent object, unless congress can be compelled into instant compliance, has something so *shocking* in it that *humanity revolts at the idea*. *My God!* what can this writer have in view, by recommending such measures? Can he be a friend to the army? Can he be a friend to the country? Rather, is he not an insidious foe? some emissary, perhaps, from New-York, plotting the ruin of both, by sowing the seeds of discord and separation between the civil and military powers of the continent?"

Recurring to the insidious imputation which he felt was levelled directly at himself, he remarked—"With respect to the advice given by the author, '*to suspect the man who shall recommend moderation and longer forbearance, I spurn at it*, as every man who regards that liberty and reveres that justice for which we contend, undoubtedly must." After this strong avowal of his contempt for this attack upon himself, and after renewing the pledge of his exertions in their behalf, he concluded:—"Let me conjure you, in the name of our common country, as you value your own sacred honour, as you respect the sacred rights of humanity, and as you regard the military and national character of America, to express your *utmost horror and detestation* of the man who wishes, under any specious pretences, to *overturn the liberties of our country, and who wickedly at-*

*tempts to open the flood-gates of civil discord and deluge our rising empire with blood !"*

Awed by the majesty of his virtue, and touched with his interest in their sufferings, every soldier's eye was filled with a generous tear ; they reprovèd themselves for having doubted him who had never deceived them ; they forgot their wrongs, in the love of their country and of their chief ; their first act was to reciprocate thanks for the affection he had shown them ; their next, to declare " their unshaken confidence in the justice of congress and their country," and their " abhorrence and disdain" at the infamous propositions contained in the late address and machinations of designing men, " to sow discord between the civil and military powers of the United States "

The conjecture in the erased paragraph of Washington's letter to Hamilton, fell upon a person at that time in the family of General Gates ; but though public opinion had fixed the address upon him, its source was not for a long time acknowledged.

It was at last publicly avowed by Major John Armstrong, then the aid-de-camp and instrument of Gates, accompanied with a vindication of his motives \* In this publication, the extract of a letter from Gates to Armstrong is given, in which he says—" As Gordon is an old friend and an honest man, I have answered him frankly, that the letters were written in my quarters by you, copied by Richmond and circulated by Barker, and were intended to produce a strong remonstrance to congress in favour of the object prayed for in a former one, and that the conjecture that it was meant to offer the crown to Cæsar,†

\* Subsequently appointed by Jefferson minister to France, and secretary at war by Madison

† In May, 1782, Colonel Nicola wrote to Washington suggesting the introduction of a monarchy, and was indignantly rebuked. In a note upon this correspondence, 8 Washington's Writings, 302, this comment is found —

was without any foundation." Thus is confirmed the suspicion alluded to by Washington, that "the old leaven was at work."

Gates is exhibited in the extraordinary position of presiding at the meeting of officers, and signing resolutions which denounced, "as a machination of designing men to sow discord between the civil and military powers of the United States," a production written in his own quarters, "by his own aid, and with every step in the progress whereof to publicity he was familiar—a procedure he described as merely "intended to produce a strong remonstrance to congress" in behalf of the army.

Upon the reception of the intelligence from headquarters of the conclusion of this affair, Colonel Hamilton introduced a report, which was adopted, paying a just tribute to Washington and the officers. "That congress consider the conduct of the commander-in-chief on the occasion of some late attempts to create disturbances in the army, as a new proof of his prudence and zealous attention to the welfare of the community; that he be informed that congress also entertain a high sense of the patriotic sentiments expressed by the officers in their proceedings, which evince their unshaken perseverance in those principles

"There was *unquestionably* at this time, and for some time afterwards, a party in the army, neither small in number nor insignificant in character, prepared to second and sustain a measure of this kind, which they conceived necessary to strengthen the civil power and draw out the resources of the country, and establish a durable government" It is more probable that this letter originated in a plot to rum Washington, of which Nicola, a weak and aged foreigner, was the ignorant instrument. No *evidence* has been met with of the existence of such a party in the army. Indeed, such a design was too preposterous to have been seriously entertained. One of the most pleasing traits of Washington's character was, his affection and confidence in the officers of the revolution. One of these was the object of his abhorrence, and that one, it will appear, entertained such opinions. But he was at this period, if not "insignificant in character," a person of little weight

their origin here ; but still, the prejudices of some, the designs of others, and the mere machinery of the majority, makes address and management necessary to give weight to opinions which are to combat the doctrines of these different classes of men in the field of politics. I would have been more full on this subject, but the bearer (in the clothing department) is waiting.

“I wish you may understand what I have written”

The friends of the army had continued to press their claims. When the former vote was taken in relation to them, Delaware was not represented. Her delegates were induced to proceed to Philadelphia, and on the tenth of March, the day upon which the seditious notice was issued at Newburgh, the report having been so amended as to omit a provision for the widows of the officers who should lie in the service, the question was again taken, and eight states voted in\* favor of it. A few days after this decision, intelligence was received of the alarming proceedings at Newburgh, and those whom gratitude and a sense of justice had not influenced, yielded to their fears. But at the last moment a serious difficulty arose from an apprehension of the injurious effect upon the public credit which might result from the sudden alienation, at an undervalue, of so large a mass of certificates, and it was proposed that they should not be transferable. The delegation from the army spurned the idea, justly asked if they were not freemen, if the balances were not their property, and insisted to be placed on the same footing with every other creditor. This objection was too forcible to be answered. It prevailed, and on the twenty-second of March, nine states concurred in granting a commutation. The

\*The vote of Connecticut was divided; New-Hampshire, Rhode Island, and New-Jersey, (Boudinot excepted,) voted against it.

resolution making this grant, stated that congress was desirous as well of gratifying the reasonable expectations of the officers of the army, as of removing all objections which may exist in any part of the United States to the principle of the half-pay establishment, for which the faith of the United States had been pledged; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices, and sufferings, have so just a title to the approbation and rewards of their country\* This resolution was from the pen of Hamilton. Thus he was the instrument of accomplishing that measure which he had suggested in the formation of the military establishment; triumphing over the reluctant justice of the states, and discharging that sacred debt, his interest in which, delicacy had induced him to relinquish.†

\* The resolution granted securities for five years' full pay, bearing an interest of six per cent, to be such as were to be given to the other public creditors. The army demands now assumed the form of a settled debt, and though the requisitions of congress were unsuccessful, several states for a long time paid the stipulated interest.

† Previous to the discussion of the army claims, he addressed a note to the secretary at war, renouncing his claim to half-pay.

## CHAPTER XVII.

[1783]

THE intelligence of peace diffused a general joy throughout the American continent.

The arduous conflict was ended; and without any degrading circumstance, or any sacrifice of national honour, the sovereignty of the United States was acknowledged. France also stood in a commanding position, enjoying the singular distinction of having promoted the independence of the two greatest republics in the old and new world—relieving the United Provinces in their struggle with Spain, during the reign of Henry the Fourth, and aiding the revolution of these united colonies in that of Louis the Sixteenth.

When adverting to these circumstances, the similar policy pursued by either potentate, arrests attention. Henry was in treaty with Spain; Louis, with England. Both hesitated\* as to the obligations of these treaties, both disregarded them. Each commenced with secret aids; each terminated in open war; nor were the results unlike. In both instances, France was actuated by mo-

\* Louis, with a prophetic fear, was opposed to this interference, an opinion in which Turgot concurred. Maurepas and Vergennes, sustained by the jurists Favier and Pfeffel, took the opposite view. Hume justly contrasts the conduct of James the First with that of Henry—*History of Great Britain*, v 6, p 23. Sully reproaches him for not having followed the example of France. “But what can be expected from persons who neither know how to seize opportunities as they offer, to execute any thing boldly, or even to desire any thing with steadiness?”—*Lab.* 24.



tives of policy ; in both, she deceived her ally ; in neither, did she derive any permanent benefit from her intervention.

Monarchs change, but centuries produce few changes in the morals of despotic courts

The attention of congress had been withdrawn by this event from the provision for the public debt, and from the urgent claims of the army.

The influence exerted by Hamilton in determining the subsequent policy of the United States towards other nations, and the decisive bearing which that policy had, both upon his own fortunes and upon those of this country, indicate the necessity of a retrospect of some of the leading circumstances which mark the character of our early diplomacy. If this retrospect should at first be deemed too wide a departure from his immediate history, after events will show that it is indispensably necessary to a full comprehension of his public services, and that justice to his character demands it.

It is a painful fact in the history of almost every struggle for freedom, that the oppressed party has been compelled, as an equivalent for the assistance it has received, to sacrifice a part of the independence for which it was contending, either by direct stipulations of advantage to its ally, or by the more injurious consequences of popular feeling, in which hatred of an enemy produces too strong a bias to a friend.

That which is not wrested from dependence, is claimed as the due concession of gratitude ; a claim which those who aspire to lead the public sentiment, are too ready to encourage, and which the friends of national character find it difficult to resist. This evil would be greater and more apparent in the history of the United States, as theirs was an alliance with an absolute government, which could feel no sympathies with the principles of the American

controversy against a nation in whose constitution and morals those principles had their source.

As early as September, seventeen hundred and seventy-five, measures were under consideration for obtaining foreign succour ; and for that purpose, a committee of secret correspondence was appointed, of which Benjamin Franklin was chairman.

This committee selected Arthur Lee, of Virginia, the agent of the colony of Massachusetts, then residing in London, as the medium of communication. He disclosed his commission to the envoy of France, who immediately apprised his government. The dissensions in the American colonies had early presented themselves to the court of Versailles, as an opportunity to weaken her powerful neighbour ; and scruples as to the violation of a subsisting treaty were overcome by the strong motive of a supposed national interest. Uncertain as to the issue of the controversy, France, it has been observed, adopted the policy of granting secret aids—aids so limited, as to indicate a disposition rather to foster an embarrassing quarrel, than to assist in founding an empire. But the same foresight which prompted congress in July, seventeen hundred and seventy-six, to declare the independence of the United States, anticipated its recognition by France as one of the certain consequences of that measure ; and in the same month a plan of treaty with that power was framed. It was acted upon in the ensuing September, and Franklin, Deane, and Lee, were elected commissioners to represent their country at Versailles.

This plan provided, that each nation should commerce with the other on the footing of “ natives ;” for the mutual protection of this commerce, with the exception of certain articles enumerated as contraband ; for the retention by France of her existing fisheries, with a stipulation that neither party should interfere with the fishing-grounds of

the other, on pain of confiscation. It further provided, that France should not under any pretence possess herself of any of the territories then or lately under the dominion of Great Britain, on or near the North American continent, it being the declared intention of the United States to have the sole and exclusive possession of them. It secured access, on the same terms with France, to such of the British West Indies as she might capture; gave permission of free access, by the men-of-war and privateers of either party, to the ports of the other, excluding from them any captures from either nation by an enemy; with the right also of unmolested trade by either party from its own to the ports of an enemy of the other, 'or from one of that enemy's ports to another. It also provided for an exemption from duty, in the French islands, on molasses shipped to the United States, and that the duties on articles in those islands, when sent there, should not exceed the lowest duties upon the same articles when shipped to France.

The instructions which accompanied this plan, authorized the substitution of a commerce on the footing "of *the most favoured nation*," if France objected to that of "*natives*;" a waiver of other of the proposed articles upon certain contingencies; and urged a public acknowledgment by France of the independence of the United States, with assurances to Spain not to interfere with her colonial dependencies.

Additional instructions were subsequently given, to take measures to prevent the employment by England of foreign mercenaries, offering an entire exclusion of her from the American fisheries, with a participation in them to France, and an assurance of aid in the reduction of the British West Indies, then to belong to France, as inducements to obtain a declaration of war. The same commissioners were instructed to negotiate a treaty of commerce and alliance with Spain; for which purpose they were di-

rected to promise aid in the reduction of Pensacola, with an express reservation to the United States of the use of its harbour, and of the free navigation of the Mississippi. Measures were also taken to form treaties with Prussia, Austria, and Tuscany.

These propositions were coldly received by France. The issue of the last war with Great Britain, while it stimulated to revenge, inspired caution. But the difficulty of concealing her co-operation increased; and when the surrender of Burgoyne and the onset at Germantown gave evidence of the vigour and resources of America, she resolved to throw off the mask. An interview was held with the American commissioners. the terms of the proposed treaty were considered; and after an interval, during which an answer was received from Spain refusing to unite in the measure, a treaty of amity and commerce was concluded with the United States, on the sixth of February, seventeen hundred and seventy-eight.

By this treaty, each party was placed on the footing of "*the most favoured nation.*" Similar stipulations for mutual protection and facility of intercourse, were made with those in the original plan; an article was added, granting to each nation the liberty of maintaining in the ports of the other a consular establishment, to be regulated in its functions by a convention; and another, by which France promised to grant one or more free ports in Europe, and to continue the free ports which had been, or were then, open in the West Indies. The article as to molasses was objected to, but ultimately permitted to remain on the grant as an equivalent, that all *merchandise shipped directly from the United States to the sugar-producing islands, should be free of duty*;\* that excluding France from possessing

\* The American commissioners were Franklin, Deane, and Lee. Lee at first declined to sign, from an objection to that article of the commercial

herself of any of the territories or islands then or lately under the dominion of Great Britain on or near the North American continent, was dissented from and abandoned.

A treaty of alliance, eventual and defensive, was also formed. It provided, that common cause should be made if war should break out between France and Great Britain during the continuance of the war between her and North America. It declared that the essential and direct end of this alliance was the liberty and independence of the United States, both in government and commerce; that acquisitions by the United States in the northern parts of America, or of the Bermudas, should belong to them, and renounced, on the part of France, the possession of those islands and of all the North American territory previously or then belonging to Great Britain or to the United States. All British islands situated in or near the Gulf of Mexico, if captured by France, were to appertain to her.

An article was inserted, at the instance of the American commissioners, that no peace or truce was to be concluded with Great Britain by either party without the formal consent of the other; and a mutual engagement was made,

treaty which had been inserted as an equivalent for the exemption of molasses, an objection which had been approved by Ralph Izard, the commissioner to Tuscany. Franklin did not attach much importance to this exception, but with a view to unanimity, asked of the French court an omission of these articles. France, although she had expressed an indifference as to their introduction, insisted on retaining them, and they were inserted.

The views of Lee were approved by congress, and on the ratification of the treaty, these articles were rejected by an almost unanimous vote, and subsequently expunged.

The objections were, that by this article, "the French might lay what duty they pleased on their European exports, and upon sugar, coffee, and other productions of their islands, without any check. For if, in consequence of any such duty imposed by them, a duty were to be laid by America on any of her exports to France, the French vessels would have nothing to do but to clear out for the West Indies, and sail directly for Europe, or touch first at one of their islands."

“not to lay down their arms until the independence of the United States shall have been *formally* or *tacitly* assured by treaty.” It excluded all claim of compensation on either side, and contained a mutual guarantee against all other powers from its *date forever*—on the part of the United States to France, of her present possessions in America, or those she might acquire by a future treaty of peace; and on the part of France to the United States, of their liberty, and independence of government and commerce, and all their possessions, and the conquests they should have made from Great Britain during the existing war, as the same “shall be affixed at the moment of its cessation.”

To define more explicitly the sense of this guarantee, it was declared, that in case of a rupture between France and England, it was to take effect from the moment of that occurrence. If such rupture did not occur, then it was not to take effect “until the cessation of the war between the United States and England shall have ascertained their possessions.”

A separate and secret article was added, by which Spain was entitled to accede to these treaties and participate in these stipulations at such time as she should judge proper, with an engagement to admit such alterations, analogous to the aim of the alliance, as Spain or the United States may propose, and shall be deemed conformable with reciprocity. This treaty, containing such important provisions, was framed by France without having been anticipated by the United States, was presented to the American commissioners the first time on the eighteenth, was assented to on the twenty-seventh of January, and signed on the sixth of February, simultaneously with the treaty of commerce.

These compacts have been eulogized as evidences of the magnanimity of France, and have been pronounced more

beneficial to the United States than to their ally. The only adequate motives that can be ascribed to France for making them were, to abridge the power of a rival, to enlarge her commercial relations with a new and growing country, and to secure permanently her American possessions. The first result she anticipated from a contest in which she knew the United States must prevail; as to the second, although she was too wise to excite jealousy by very unequal terms, she secured to herself *forever* the advantage of a trade, on the privileges of "*the most favored nation*," with a young, growing, and extensive empire, without giving any essential commercial equivalents. But the third, although it appeared to be a measure of reciprocity, was largely in her favour. She guaranteed to the United States their sovereignty and independence; as an equivalent for which, they guaranteed her West India possessions. Whenever the independence of the United States should be obtained, as it was not within the calculation of probabilities that it would ever again be at hazard, the guarantee of France would be nominal, while that of the French islands would be operative in every maritime war in which France might be engaged, would be an effectual protection of them by means of the future power of this republic, and might involve it in controversies in which it had not only no mutual, but, perhaps, an opposite interest.

Upon the conclusion of this treaty, Gerard was appointed minister plenipotentiary to the United States, where he arrived in the month of July. Silas Deane was recalled, John Adams substituted for him, and Franklin commissioned to the French court, *but with instructions not to enter into any stipulation without the previous consent of America*.\* The mission of Gerard was not disclosed by

\* It is stated that in a conference between Gouverneur Morris and Gerard, in relation to the instructions to be given to Franklin, "one important fea-

his joint commissioners to Lee, who addressed a letter to Franklin expressing in strong terms his indignation at this concealment, and charging upon him circumstances to show a studied design to mislead him. To this letter no reply has been found; the concealment has been excused on the ground of an injunction of secrecy by the minister of France. These dissensions were censured by congress, and a motion to recall Franklin was rejected by the votes of ten states.\* Within a few days after, Lee communicated to Vergennes that Hartley, an English member of parliament, was endeavouring to insinuate distrusts of the conduct of France; and that agents for a similar purpose had been despatched to the United States. Lee's hesitation as to the treaty had given displeasure, and this letter was answered by a sharp and insulting reply.†

The agents mentioned by Lee arrived in the United States and attempted to open a negotiation, but congress refused all correspondence with them, unless preceded by an acknowledgment of their independence, or the withdrawal of their fleets and armies. A fruitless attempt was also made to treat separately with Franklin. Apprehensive that these experiments on the good faith of America might succeed, the French ambassador declared that it had been pretended that the United States had reserved

ture was *struck out* at the suggestion of Gerard" It was a direction to Franklin to urge France to send an increased naval force to aid in driving the British from the seaports. This was *objected to* by Gerard, on the grounds that it was not *feasible*, nor would be *advantageous*. The project for attacking Canada was wisely discountenanced. What the motives of France were, is not known, perhaps not too much to aggrandize the United States, as, if conquered, it was guaranteed to them, and probably with the ulterior view of obtaining it herself, at the termination of the war, as the restoration of an ancient possession. Other motives have been assigned — *Life of Gouverneur Morris*, vol 1, 189.

\* McKean's letter as to this, p 177, vol 2, R. H. Lee's Life.

† 1778.—2 D. C 145, 157.



the liberty of treating with Great Britain separately from their ally, as long as Great Britain shall not have declared war against his master ; which was met by an explicit assurance, that the United States would not conclude a peace or truce with the common enemy, without the formal consent of their ally ; and that any insinuations or assertions to the contrary, tended to their injury and dishonour.

Several months having elapsed since the signature of the treaty which gave to Spain the right of acceding to the alliance, Lee, who had been at an early period commissioned to open a negotiation with that court, proposed it to Vergennes. His reply stated, that he would "act prudently in suspending the measures, with a view of ascertaining its principles and resolutions with regard to America." This answer was transmitted to the United States, and about the time it was received, Gerard announced to congress that Spain had resolved to make a final offer of mediation, and urged the immediate appointment of a minister to Madrid to assist in the deliberations, and to conclude a treaty. The important question as to the ultimata to govern a treaty with Great Britain, was now considered by congress.\*

It was proposed, as a preliminary to all negotiation, that the independence of the United States should be acknowledged. The boundaries were defined nearly as they were subsequently established by the definitive treaty. The country was to be evacuated by the British forces, and the free navigation of the Mississippi as low as the southern limits of the United States, and a free commerce (excepting enumerated articles) to some port or ports near its mouth, were to be insisted upon. Conditional articles relating to the British North American possessions—the

\* February 23, 1779 —2 S. J. 228.

Bermudas and Floridas—with a stipulation that the United States should not trade to the East Indies, or engage in the slave trade, were also proposed, but were set aside.

The debate upon these terms, in which the fisheries were the prominent topic, was protracted until July ; during its progress, repeated communications were made by the envoy of France. On the twenty-second of May, seventeen hundred and seventy-nine, congress were reminded of the determination of France to continue the war until independence shall have been formally or *tacitly* acknowledged—that she was only bound by her treaty, and that as to the possessions to be insisted upon—that her engagements were conditional, and that the obligations did not commence until they were fixed by the cessation of the war ; and a caution was given against “ far-fetched inductions, subject to discussion and contradiction, tending to alter the fundamental system of the alliance.” This was followed by a second urgent memorial on the importance of the mediation of Spain, and of a decision upon the terms. On the twelfth of July a conference was had, in which Gerard stated “ that the court of London, showing on one side dispositions to a reconciliation with France, rejected, on the other, a formal explicit acknowledgment of independence, which France persevered to hold up as a *preliminary and essential condition.*” He reminded congress, that Holland had only obtained a *tacit* acknowledgment of independence after a war of thirty, and an *explicit one* after a resistance of seventy years ; and that to that day, Genoa and the Swiss cantons had obtained no renunciation or acknowledgment, either tacit or formal, from their former sovereigns ; but that they enjoy their sovereignty and independence only *under the guarantee of France.*

This was pronounced a difficulty “ *merely in words,*” and it was suggested “ that instructions upon *particular*

*conditions*" might frustrate the purpose of the treaty, (of a *tacit* acknowledgment;) and the necessity, by the adoption of "just and moderate terms" towards England, of enabling Spain to bring her mediation to an issue, was enforced. Congress were also reminded, that "*proper terms*" should be offered to his catholic majesty, in order to reconcile him perfectly to the American interest, and lest he should "drop the mediation."

To obviate these difficulties, a commission with full powers based on the treaty with France was proposed. Congress resumed the consideration of their ultimata: after much debate, a division was taken on an amendment admitting that independence might be "*tacitly assured*," and it was negatived. As to the fisheries, it was decided that the guarantee of them should not be an ultimatum, but that in any treaty of commerce with Great Britain, that right "should in no case be given up." The instructions were, that "in all other matters you are to govern yourselves by *your own discretion*, as shall be most for the interest of these states, taking care that the treaty be founded on principles of equality and reciprocity, so as to conduce to the mutual advantage of both nations, but not to the exclusion of others."\*

As this negotiation was to be conducted under the mediation of Spain, the terms of a treaty with that power were also discussed. Congress, anxious to obtain a subsidy, aware of her desire to repossess the Floridas, and doubtful of the extent of the treaty of alliance with France on this point, agreed to guaranty them to Spain if conquered from Great Britain, but insisted upon the free navigation of the Mississippi into and from the ocean. A motion to authorize a relinquishment of this essential right, on condition of the grant of a free port or ports below the boundary of the

United States, if that right should be found an insuperable obstacle to a treaty, was *rejected*.

These instructions being adopted, they proceeded to the choice of a minister to Spain. Jay was elected.

In the prospect of a successful issue to this mediation, John Adams, who had returned to the United States, was at the same time appointed envoy to Great Britain, and Henry Laurens to the United Provinces. Jay proceeded to Spain, Adams to Paris.

In the early part of the sojourn of Adams at Paris, during his first mission, nothing of a very marked character occurred. He went there with impressions not unfavourable to France,\* though it seems he indulged suspicions that she had obtained unfair advantages in the treaty,† and awake to the dangers of foreign interference, he early expressed his apprehension, “lest‡ Americans should avail themselves of the aid of the French influence, to raise their reputation, extend their influence to strengthen their parties, and to promote the purposes of private interest and ambition.”§ Confidence in his independence by one

\* “It is a rock” (the alliance) “upon which we may safely build. Narrow and illiberal prejudices, peculiar to John Bull, with which I might perhaps have been in some degree infected when I was John Bull, have now no influence over me. I never was, however, much of a John Bull, I was John Yankee, and such I shall live and die”—4 D C 261

† 4 D C. 275

‡ Ibid 282

§ In a despatch to congress, Adams, in speaking of Markow, the minister of Russia at the Hague, mentions—“His behaviour to me is a distant bow, an affected smile sometimes, and now and then a ‘*comment vous portez vous?*’ One evening at court, when the northern epidemy was here, he put me this question after supper, in great apparent good-humour. *Terriblement affligé de l’influença*, said I. “*C’est en Angleterre*,” says he, laughing, “*qu’on a donné ce nom, et il ne ferait point du mal, si vous voudriez vous laisser gagner un peu par l’influence de l’Angleterre*.” I had at my tongue’s end to answer—“*C’est assez d’être tourmenté de l’influence qui vient de Russie*.” but I reflected very suddenly, if he is indiscreet, I will not be; so I contented myself to answer, “*Jamais, monsieur, jamais*”—6 D C. 391

party, and fear of his local influence by the other, probably induced his last appointment.

On his second arrival at Paris\* he announced his mission to Vergennes, assuring him of his intention to take no steps without consulting him, and asked his advice as to the policy of communicating his powers to England. The answer expressed an opinion, "that it would be prudent to conceal his eventual character, and above all, to take the necessary precautions that the object of his commission may remain *unknown* to the court of London."†

This opinion Adams disapproved. He wrote to congress,‡ "that it was a delicacy not perfectly consonant to his manner of thinking; and that if he had followed his own judgment he would have pursued a bolder plan, by immediately communicating his full powers." A decent intercourse with the French ministry was, nevertheless, preserved; and in his letters to them he still expressed his sense of the importance of the alliance, avowing his opinion, "that the commercial interests of England and America will forever hereafter be incompatible"§

After a long interval, Adams again apprised Vergennes at large of the reasons which prompted him to open his commission to England. The French minister transmitted an elaborate reply, stating his intention that it should be communicated by the French envoy to the members of congress, under the persuasion "that that assembly will think the opinion of the minister of France worthy some attention, and that they will not be afraid of neglecting or betraying the interests of the United States by adopting it as a *rule of their conduct*." In this reply he avowed as an objection to any overture by Adams, "that it is necessary, *first of all*, to obtain from England an *acknowledg-*

\* February 12, 1780

† 4 D. C. 364.

‡ 4 D. C. 445.

§ 5 D. C. p 104

*ment of the independence of America*, and that such acknowledgment must serve *as a foundation* for a treaty of peace :”\* well knowing that such an acknowledgment would not be granted, but that a treaty with the United States as an independent power would obviate all difficulty. The answer of Adams contained the important suggestion, that though such an overture should not be followed by a treaty, it would operate beneficially by its effect on the popularity of the English minister.

Vergennes had, in the interval, apprised him of the sailing of the armament under De Ternay and Rochambeau. This communication was acknowledged with thanks. It was again adverted to by Adams in a subsequent letter, and a reinforcement from the West Indies was suggested. The tone of this letter gave great umbrage to Vergennes, whose reply announced, “that Franklin being the only person accredited to France, that with him only he ought and could treat.”† This state of things rendering a longer residence in Paris unpleasant, Adams passed on to Amsterdam

Copies of this correspondence were sent by Vergennes to Franklin, with directions to transmit them to congress. He enclosed them in a letter commenting on the course of Adams, stating, “that‡ he thinks, as he tells me, that America has been too free in expressions of gratitude to France ; for that she is more obliged to us than we are to her, and that we should show spirit in our applications.”

Despatches from Jay were received late in the year. They represented that all the letters which werè addressed to him were opened, that the assurances of aid were not fulfilled, and expressed a strong suspicion that it was the policy of France§ so to manage, that the United States

\* 5 D C 287.      † 5 D C 305—July 27, 1780.      ‡ 3 D C 164

§ November 5, 1780.—Jay writes to Gouverneur Morris: “The French

and Spain should be debtors to her for any concession either nation should make to the other.\*

On the fourth of October† congress acted upon this letter, and upon certain instructions from Virginia. They resolved unanimously to insist upon the right of the United States to the navigation of the Mississippi, into and from the sea; to require a free port at its outlet, if the unlimited freedom of its navigation could not be had below their southern limits; and “to adhere strictly to the boundaries as already fixed by them.”

Instructions‡ to this effect were sent to Jay, with a statement drawn up by Madison, enforcing at length the claims of the United States to all the territory east of that river, insisting that, as it was embraced within the charters of particular states, it could not be relinquished by congress without embarrassment, and vindicating their right to the navigation of that river to the ocean.

No progress was made in the negotiations at Madrid; every effort to obtain aid was unsuccessful; every approach to a direct engagement was met with a frivolous pretext. No support was obtained from the resident minister of France at that court, and a formal annunciation was made to Jay, that no money was to be expected, “and that that which would have facilitated a far-advanced negotiation, was likely to produce no effect, in a great measure through the undermining of *some persons of rank in France.*”§

Relying on the assurances of Spain, large drafts had been accepted, and strong representations were made to induce her to pay them. They failed, and the American envoy was at the same time told that the navigation of the Mississippi would never be relinquished ||

ambassador here has excellent intelligence from your city I know but little of what passes among you”—Jay’s Life, vol. 1, p 114.

\* 7 D C 218, 220. † 1780. ‡ 2 S. J 326. § 7 D. C. 363.

|| 7 D C 369

Thus far, the foreign policy of the United States had been directed by a spirit in congress worthy their cause and their prospective greatness.

Though their seaboard was harassed, their cities captured, their interior ravaged by a double foe, the same constancy which had repelled with hasty levies of militia the advances of well-appointed armies, was yet manifested by the states north of the Potomac. No impression had been made on the mind of their people.

Defeated in her efforts to subdue these states, England resolved to direct her arms against the south. Charleston fell ; and though Marion and Clarke, with the hardy inhabitants of the upper country, were yet formidable, Camden witnessed the incapacity and the retreat of Gates. Georgia is seen in vain imploring succour, and Jefferson was trembling for Virginia.

This was the moment chosen by the ministry of France to press interests other than those of the United States. They had recently concluded a treaty with Spain, who had refused to join the alliance without the guarantee of an exclusive right to the navigation of the Mississippi and to the region west of the Alleghamies. Their partisans in congress had increased in number. The delegates from Georgia and South Carolina were yielding to the apprehensions they had excited, and it only required the concurrence of Virginia to attain their object.

Among the members from New-England and New-York, there was not one at this time of eminent ability. Gouverneur Morris, after the passage of the instructions which he had framed, retired from congress, and early in this year Madison had taken his seat in that body. Put forward and sustained by Jefferson and Edmund Randolph, with whom he was in close correspondence, and representing Virginia, he became the leader of the southern vote, with the exception of that of his colleague, Bland.



Strong as the disposition may have been to gratify the wishes of France in other respects, the navigation of the Mississippi was too important to Virginia to be safely relinquished by any of her public men. But at this moment an event happened, which enabled France to accomplish one of the favourite objects of her European ally.

Early in October intelligence was received of a contemplated embarkation from New-York, and on the twenty-fifth of that month, Portsmouth was in possession of the British,\* who left the Chesapeake at the end of November.

On the ninth of December, Washington announced to Jefferson, then Governor of Virginia, that a second embarkation "of a body of refugees," was about taking place at New-York, supposed to be destined for the south. A part of their force was dispersed in a storm; the residue, nine hundred strong, arrived in the Chesapeake on the thirtieth of that month, whence they proceeded up the James river, under a convoy.

The news of their approach reached Richmond the following day; where, notwithstanding the previous notice, only two hundred militia had been embodied. Even this force, posted on the succession of strong and wooded hills which, separated by obstructing creeks, there pierce the river, might have repulsed the enemy, flanked with only thirty cavalry, and without a single piece of artillery. But no resistance was offered—not a gun was fired—not a life was lost. The governor and legislature fled before the traitor Arnold. On the fifth of January, he took possession of Richmond, seized a part of the archives, burnt the magazines, and retired unmolested.

Jefferson then returned to his undefended capital. A motion was made for his impeachment at the next session

\* Jefferson's Works, vol. 1, 188.

of the legislature. He declined a re-election as governor, while the motion was pending, and while the enemy were yet in possession of a part of the state. At the time his conduct was a subject of inquiry, a party under Tarleton approached. The governor, and the legislature then sitting at Charlottesville, again fled far into the interior; and in the succeeding winter, at the instance of a mutual friend, the impeachment was withdrawn; and the house, softened by his submission, relieved from his government by the election of General Nelson, a man of courage, and from future apprehension by the capture of Yorktown, passed a healing vote of approbation.\* †

On the very day‡ that the legislature abandoned Richmond, a resolution was adopted in relation to the Mississippi. It was enclosed to congress by Jefferson, at that time in correspondence with Marbois, the French secretary of legation, at whose instance he was embodying his "Notes upon Virginia." By this resolution, after ceding "her lands northwest of the Ohio, to be formed into republican states and sold as a common fund for the use of the union"—a cession which she had refused, and which it has been seen by her subsequent protest, and requiring a guarantee, she for a long time rendered of no effect—Virginia resolved, "that the navigation of the Mississippi

\* 4 Marshall's Washington, 387 —1 Jefferson's Works, 200 Lee's observations on do, 119, 140

† In a *defence* of Jefferson, published in Virginia, September 19, 1800, it is stated, that a committee was appointed on the 26th November, 1781, to state any charges and receive such information as *may be offered* respecting the administration of the late executive. On the day appointed for the inquiry, Jefferson took his seat as one of the delegates. The member who moved the investigation absented himself, and the committee reported, "no information being *offered* on the subject matter except rumours," their opinion that those rumours were groundless, and passed a resolution "to obviate all future, and remove all former, unmerited censure."

‡ January 2d, 1781

should be claimed only as co-extensive with her territory," and instructed her delegates, "that every other and further demand should be ceded, if insisting on the same, is deemed an impediment to a treaty with Spain"

A few days\* after this resolution had passed, the committee to which the complaints of Vergennes against Adams had been referred, reported a letter to be addressed to him by the president of congress. He was informed that the opinion of the French minister relative to the time and circumstances proper for communicating his powers and entering upon the execution of them, was well founded, congress having no expectations "from the influence which the people may have on the British councils!"†

De La Luzerne had succeeded Gerard as envoy to the United States. On his arrival, he had a conference with General Washington, and, as has been previously stated, in this interview, among a variety of topics, he proposed a co-operation in a contemplated expedition by Spain against the Floridas—that being the only object which in her selfish policy she cared to gain, in the hope of annexing them to Louisiana. Washington prudently declined discussing the policy of the measure, merely stating, that, as a military question, he saw no objection in case the enemy's force should be withdrawn from South Carolina and Georgia.

This idea was subsequently submitted to congress by an agent of Spain through the French ambassador, and with a view to gratify the expectations of that country, a detachment from the main army was ordered, though at great hazard, to Carolina to make a diversion. Having attained this object, encouraged by the recent letter to Adams, and confirmed in his hopes by the late vote of Virginia, a formal communication‡ was made by the French ambassador to a committee of congress of the corre-

\* January 10, 1781.

† 5 D. C 306

‡ Jan 28, 1781.

spondence which had passed between Spain and Great Britain.

This was followed by an earnest representation of the danger that Great Britain, having an insuperable reluctance to admit the idea of the independence of the United States, would involve France in her relations with other European powers; that thus an armed mediation was to be feared, which, unless the United States increased their efforts to dispossess the British of their territories, might compel the allies to accept of terms which would leave England mistress of her actual possessions, or to continue the war under the disadvantages of having the forces of the mediation united with those of their enemies.

This representation was well adapted to produce alarm. A second conference was had, in which the anxiety of Spain for an alliance was stated. The importance of "*moderation*" in their negotiation with her was suggested, and her views specified. These were, that the United States should confine their limits to settlements permitted by the proclamation of seventeen hundred and sixty-three, and that a precise and invariable western boundary should be fixed—the exclusive navigation of the Mississippi—the possession of the Floridas, and of the lands between that western boundary and the eastern side of that river. The consequences of these stipulations were avowed, that the United States should be excluded from the navigation of that river, because by such limitations no territories would belong to them on its borders, and that the southern states should be restricted from any settlements or conquests in those territories, they being the possessions of the crown of Great Britain, which Spain proposed to occupy and retain "*as a permanent conquest.*"

More than a month had elapsed since the resolution of Virginia passed. It was passed under circumstances which would have justified a pause, and a demand of new

instructions. Yet in obedience to this resolution,\* and thus urged by the French minister,† Madison prepared an instruction to Jay, *not* to insist upon the free navigation of that river to the ocean, “provided such cession shall be unalterably insisted upon by Spain;” but to be satisfied with a guarantee by her of its use to their own citizens, in common with her subjects, above the southern boundary of the United States, and to exert every effort to obtain a free port or ports below that boundary.‡ This instruction passed.§

The impolicy of this act was manifested by the conduct of Spain. Though intended to be secret, it was made

\* Col. Grayson, of Virginia, calls it “a disgraceful proposition”—Debates in Virginia Convention.

† 1 Mad 66, Madison says—“In this important business, which so deeply affects the claims and interests of Virginia, and which I know she has so much at heart, I have not the satisfaction to *harmonize in sentiment* with my colleague” “He,” Colonel Bland, “has embraced an opinion that we have *no just claim to the subject* in controversy between us and Spain, and that it is the *interest of Virginia not to adhere to it*”

In the Life of Arthur Lee, vol 2, 384-5, Nov. 20, 1786, a letter from Col Bland to Lee is to be seen Bland writes—“I *cannot agree* with you on the policy of Spain or the eastern states to relinquish to Spain the navigation of the Mississippi, *even for a moment*. It is a *right* which we have confirmed to us by treaty It is a right which *nature* has given us. *It is a right which nature will claim*. It is a right which it is impossible in Spain to deprive us of, and in the attempt, she has shown that she considered it a right. Why else should she endeavour to barter another privilege for it? Have you not mistaken the effect of the exclusion? I rather think that, could it be carried into execution, it would *stifle the germ of agriculture and improvement*”

As such were the sentiments of Bland, the statements of Madison on this subject would appear to require elucidation.

In a letter of Madison, App. to vol. 1, p. 21, he says—“Congress seized the *first moment* also for revoking their instruction to Mr. Jay.” This is a slight inaccuracy; this instruction was not revoked until late in the following year.

‡ 2S J. 397.—Feb. 15, 1781.

§ Massachusetts, Connecticut, North Carolina, negative, New-York, divided

known to her before the information of it reached the American envoy at Madrid. Convinced that this great object was secured, no motive existed to depart from the policy she had adopted. Nothing was promised or denied, but a clew was given to her purposes by the observation of her prime minister to Jay, "that all these affairs could with more facility be adjusted by a *general peace* than now; for that such a particular and even secret treaty with us might then be made, as would be very convenient to both" Discouraging as every appearance was, the mission was prosecuted with diligence, patience, firmness, and discernment, until all efforts proved fruitless. Two hundred years had not effaced from her iron memory how much she had suffered by a revolt. She now saw in every throe of liberty the loss of her western empire; nor, could she have forgotten it for a moment, would bigotry have failed to remind her that it was a revolt of heretics.

A few days after congress had yielded in relation to the navigation of the Mississippi, the French ambassador transmitted to them a letter from his king, assuring them of his determination to assist them as far as his own wants and the extraordinary and enormous expenses of the war would permit. This communication was followed by a memorial showing the extent of the proposed aids, but announcing that the second division of the French army could not be expected that campaign. A second memorial was presented, in which the acceptance by Great Britain of the mediation of Russia was announced; and a request was made for the appointment of a committee to discuss with him the manner of conducting the negotiation, the extent of the powers of the commissioners, the extent to which they were to be used, and the confidence to be reposed in the plenipotentiaries and cabinet of France "Moderation" was again inculcated.

It has been seen that Adams had been driven with indignity from Paris. Apprehensive of his resentment, and of the influence which his suspicions and those of Dana as to the policy of France might have upon their conduct at a moment when indications were given of a desire on the part of Great Britain to terminate the contest, it became important to France to exercise over them an absolute control.

The instructions to Adams, penned by Gouverneur Morris, had directed him to govern himself by the alliance of the United States with France—"by the advice of our allies, by his knowledge of *our interests*, and by *his own discretion*."

To correct what France deemed an error in these instructions, the French minister having on the seventh of May, at the earnest entreaties of Virginia, despatched a fleet to the Chesapeake under Destouches, sought a conference with congress. After stating that the appointment of Dana was premature, and the opinion of the council that he ought not to make any use of his powers at this moment, "lest the dignity of the country should suffer by his being refused," he proceeded to comment on the conduct of Adams. He stated "circumstances to prove the necessity" of a line "being drawn" of which Adams might not be allowed to lose sight, and dwelt especially on the use which he thought he had a right to make of his powers to treat with Great Britain. He then added, that "if congress put any confidence in the king's friendship and benevolence, they would be impressed with the necessity of prescribing to their plenipotentiary a perfect and open confidence in the French minister, and a thorough reliance on the king; and would direct him *to take no step without the approbation of his majesty*," and as to the manner of executing his instructions, "*to receive his directions from the Count de Vergennes*." This conference was followed by the annunciation, while the instructions were

before a committee of congress, that the king of France had granted "a gratuitous subsidy" of six millions of livres.

After much discussion,\* instructions were given to the American plenipotentiaries to accept the mediation of the emperors of Russia and Germany, but not to accede to any treaty of peace "which shall not effectually secure the independence and sovereignty of the thirteen states, according to the form and effect of the treaties with his most christian majesty, and in which those treaties shall not be left in their full force and validity." Thus the express preliminary acknowledgment of independence was abandoned.

With a view to secure to France the control of the negotiation, the American minister was instructed "to make the most confidential communications upon all subjects to the ministry of France, and to undertake nothing without their knowledge and concurrence;" and authority was given to agree to a *truce*. These instructions were directed to be communicated confidentially to the French ambassador. He *objected* to them. They were ordered to be *reconsidered*. The clause, "you will use your own judgment and prudence, in securing the interest of the United States," was erased, and the words, "you are at liberty to secure," were substituted; and after the word "concurrence," an addition was made, by which the minister was directed "*ultimately to govern himself by their advice and opinion.*"

This last clause, so derogatory from the dignity of the country, it was moved four days after to reconsider; but the motion was rejected. This vote was followed by a conference, in which the magnitude of the king's bounty was stated at large. It will be remarked with surprise,

\* June 11, 1781.—2 S. J. 439.



that on the first of the preceding amendments, the only negative states were Massachusetts and Rhode Island; that as to the last, the only dissentients were Massachusetts, Rhode Island, and Connecticut; and that on the motion to reconsider, the only affirmative states were Massachusetts, Rhode Island, Connecticut, and Delaware, New-York not being represented. It is due to the memory of a gallant soldier of Virginia to record, that while the vote of that state was given by Jones and Madison in favour of these amendments, Colonel Bland opposed them in every stage.\* †

\* The negatives were Massachusetts—Lovell and Ward; Rhode Island—Varnum, Connecticut—Huntington, (Elsworth and Sherman, who took their seats on the 4th of June preceding,) Pennsylvania—Montgomery and T Smith; Virginia—Bland

† The clause as ultimately adopted ran thus—after referring to former instructions as to boundaries—“from† which you will perceive the desires and expectations of congress, but we think it unsafe, at this distance, to tie you up by absolute and peremptory directions upon any other subject than the two essential articles above mentioned You are, therefore, at liberty to secure the interest of the United States in such manner as circumstances may direct, and as the state of the belligerent and disposition of the mediating powers may require For this purpose, you are to make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the king of France, to *undertake nothing* in the negotiations for peace or truce without their *knowledge and concurrence*, and *ultimately to govern yourselves by their advice and opinion*, endeavouring in your whole conduct to make them sensible how much we rely on his majesty's influence for effectual support in every thing that may be necessary to the present security or future prosperity of the United States of America.

“If a difficulty should arise in the course of the negotiation for peace, from the backwardness of Britain to make a formal acknowledgment of our independence, you are at liberty to agree to a *truce*, or to make such other concessions as may not affect the substance of what we contend for; and provided that Great Britain be not left in possession of any part of the thirteen United States”

This degrading concession\* to France was not the only consequence of the recent invasion of Virginia. A proposal was soon after made that the states should empower congress to compel, by an armed, land, or naval force, any delinquent state "to yield prompt obedience to all just requisitions on them; and as to those that had little or no foreign trade of their own, that all inland trade with such states as supplied them with foreign merchandise might be interdicted, and the concurrence of the latter enforced, in case of refusal, by operations on their foreign trade" "There is a collateral reason," Madison observed, "which interests the states who are feeble in maritime resources in such a plan. A navy so formed, and under the orders of the general council of the state, would not only be a guard against aggressions and insults from abroad, but, without it, what is to protect the southern states, *for many years to come*, against the insults and aggressions of their northern brethren."† So remote were his ideas at that time from a national government. While Madison was thus proposing to provide for future wars between the states, Hamilton, as has been seen, was urging measures to strengthen the union "Force cannot effect it The application of it," he said, "is always disagreeable, the issue uncertain. It will be wiser to obviate the necessity of it, by interesting such a number of individuals in each state in

\* Two days after, Gouverneur Morris wrote to Jay "But when you come to find by your instructions that you must ultimately obey the dictates of the French minister, I am sure there is something in your bosom which will revolt at the servility of your situation Do I not know you well enough to believe that you will not act in this new capacity? I think I do, and therefore I will express my concern that you must decline the honour, if that name can be applied to such offices Decline, however, with decency, though with dignity. I mean always if no alteration takes place, which shall be done if I can effectuate it, though I almost despair. No other congress will surrender all, as this has, to an ally"

† Madison Papers, v 1, p 87 Madison to Jefferson, who approved the idea.

support of the federal government, as will be a counterpoise to the ambition of others, and will make it difficult for them to unite the people in opposition to the just and necessary measures of the union.”\*

As the independence of Adams had been complained of by the French minister, it was proposed that other persons should be united with him in the mission. This was at first rejected, but four other commissioners, Franklin, Jay, Jefferson and Laurens, were subsequently added. Thus a preponderance, it was hoped, would be secured to the party attached to France.

Adams still retained powers to form a commercial treaty with Great Britain, the terms of which, it has been seen, required that no privileges should be granted to England not conferred on France, excluded any peculiar limitations in her favour, and stipulated expressly for a participation in the fisheries; but in all other matters gave him full discretion to treat on terms of equality and reciprocity. It was possible that Great Britain might avail herself of these powers, as by a commercial treaty she would avoid the express acknowledgment of independence; and that thus the whole object of the recent instructions, to submit to the control of France, would be defeated.

To prevent such a result, a great stroke of policy was resorted to. An additional instruction was moved by Madison†—that in negotiating a treaty with Great Britain, Adams should enter into no such treaty unless in addition to the stipulations as to the fisheries; all the objects included in their original ultimatum of seventeen hundred and seventy-nine, as to a treaty of peace, as the same stood prior to their instructions of the fifteenth of June, should be in such treaty of commerce explicitly acknowledged and stipulated to the United States.

\* Ante, vol 1, p 371.

† June 29, 1781 —2 S J. 458.

The insuperable obstacle on the part of Great Britain, it had been fully ascertained, was a preliminary acknowledgment of independence. This original ultimatum required\* it as a preliminary article to any negotiation, that Great Britain shall agree to treat with the United States "as sovereign, free, and independent." Thus all possibility of exercising his powers by Adams would have been prevented. That such was the object of this motion, and not the securing a preliminary acknowledgment, must be inferred from the fact that the mover of the resolution voted for the instructions of the fifteenth of June, by which this previous acknowledgment of independence was waived, and it was to become merely an article of treaty.

This last motion was rejected, three states voting for it.† Baffled in this effort to interpose an impassable barrier to all direct negotiation with England, the only alternative that remained, was to withdraw his powers to form a treaty, and at the instance of Madison the commission to Adams was revoked ‡

Having succeeded in obtaining the entire control of the negotiation for peace, and, by the revocation of the powers granted to Adams, having closed the door upon Great Britain, it might have been supposed that France would have felt herself secure; but she still saw cause of apprehension. Adams was in Holland, England was represented at the Hague, and it was impossible to foresee the consequences of a negotiation being opened between them. These were to be prevented.

On his arrival at Amsterdam, Adams suggested the importance of maintaining an official agent there, and he was

\* 2 S J 225

† Connecticut, Virginia, and North Carolina—(Elsworth, Bland, and Smith, dissenting)

‡ July 23, 1781, vol. 4, No 36, state department; Madison seconded by Sharpe.

empowered to negotiate a loan ; he soon after intimated the advantages to be derived from a resident embassy at the Hague. The suggestion was approved, and he was commissioned as minister plenipotentiary to the United Provinces.

As early as seventeen hundred and seventy-eight, the regency of Amsterdam had evinced a disposition to enter into commercial regulations with America. They applied to the states-general for a convoy to vessels carrying naval stores to France, and protested against a refusal of it. This gave a pretext to that nation to announce to them "the necessity of protecting their commerce, in order to enjoy the privileges of neutrality." This was not done, and a rescript was issued by France excluding Holland from those privileges, and interdicting a part of her productions. These decisive measures produced the intended effect, and a naval force was directed by the states-general to be equipped for that purpose.

Soon after, an American squadron under the command of Paul Jones entered the Texel with several prizes. He was ordered to leave the waters of Holland. While there, an address was presented by the British minister, demanding the seizure of the king's vessels in the hands of a "pirate and an outlaw." This demand was not acceded to, but Jones was again commanded to sail. Having refused with great indignation the offer from the French ambassador of a letter of marque, he departed.

But a short time elapsed when a plan of a treaty with the United States was framed by the authorities at Amsterdam. This drew an angry remonstrance from England. Measures of defence were taken by that city ; orders in council were issued by Great Britain for hostilities, and St. Eustatia was captured. Adams resolved to seize upon this moment to make an impression. He addressed letters to the envoys of Russia, Denmark, and Sweden, announcing

the resolution of congress concurring with the regulations of the "marine treaty," and at the same moment asked of the French ambassador the Duke de la Vauguyon to aid him. The former did not answer his letters; the latter stated that he had no instructions on the subject. Relying on the support of several of the provinces, he presented a memorial to the states-general, and urged his reception at the Hague. He was discountenanced by Vauguyon, and was refused. In a conference between La Luzerne and congress, they were informed that,\* "on being apprised of the intention of Mr. Adams to display his character as a minister, the duke gave him no assistance on that occasion, knowing the application would have no favourable issue."

The perseverance of Adams alarmed Vergennes, and within a few days after his powers to form a commercial treaty with Great Britain had been revoked, the French ambassador appeared again before congress. He stated the accession of Holland to the armed neutrality, the hostile acts of Great Britain, the opinion of the council of his king that a "*prudent and able man*"† should be sent to Holland with full powers; that it would likewise be advantageous to give *proper* instructions to that minister, and as it is impossible at this distance to have quick information, it would be proper to have further instructions given by Dr. Franklin, in order to avoid all inconsistency or contradiction, and that the political operations of congress, aiming towards the same end, may of course be more successful. Had Franklin, as Adams alleged, been the "index of Vergennes," a better expedient could not have been devised by France to point the way to the American resident at the Hague; but neither this nor the hint as to the selection of "a prudent and able man," could be acted upon without offending New-England.

\* 3 S. J. 35.

† 2 S. J. 466 — July 23, 1781

The original instructions to Adams were, "to adopt, in whole or without any essential alteration," a plan of treaty which was transmitted from Philadelphia, with restrictions "not to admit any thing inconsistent with the treaties with France, or not conforming to the proposed regulations of the congress of northern powers."

The only device was, to limit these instructions; and with that view a report was adopted, which, after acknowledging this effort by the king of France to make a coalition with Holland, as a fresh proof of his solicitude for their interests, stated to the French minister the previous appointment of Adams with special instructions to conform to the treaty with France, and empowered him to enter into a joint alliance with France, Holland, and Spain, on condition that no party shall conclude either truce or peace with Great Britain without the formal consent of the whole first obtained. In all *other* matters, he was to use his best discretion; and he was directed "to confer upon all occasions in the most confidential manner with his most christian majesty's minister" at the Hague.\*

While these measures were taken in America, Adams was invited by Vergennes to Paris, to consult upon the proposed mediation of Austria and Russia.

He announced his arrival; an audience was granted, and the subject was opened.†

The propositions of the mediators were upon the basis,‡

\* 2 S J. 472.—August 16, 1781

† In his letter to congress, he says—"The letter announcing my arrival, I sent by my servant, who waited until the count descended from the council, when he delivered it into his hand. He broke the seal, read the letter, and said he was sorry he could not see Mr Adams, but he was obliged to go into the country immediately after dinner, that Mr Adams 'seroit dans le cas de voir M. de Rayneval,' who lived at such a sign, in such a street. After dinner I called on M. de Rayneval, who stated the object, and an interview was appointed with the minister."—6 D C 92.

‡ 6 D. C 100 —July 11. 1781

that a treaty should be negotiated between Great Britain and the American colonies without the intervention of any of the belligerent powers, but to be signed conjointly with that of those powers, and that there should be a general armistice for one year from a period to be defined. The comments of the American minister stated that there would be no objection to such a separate treaty, consistent with their obligations to their allies, without the intervention of any of the belligerents, or (unless demanded) of the mediators. The conjoint signature was approved, but the proposed armistice or a truce, as suggested by Vergennes, was objected to except under two express preliminary conditions:—the continuance of the subsisting treaties until the acknowledgment of independence by Great Britain, and the antecedent removal of the British forces; and this truce was to be of sufficient duration to imply a virtual relinquishment of the objects of the war, and to be agreed to before the opening of another campaign.

But the great question was stated to be, the acknowledgment of independence; and “as the United States can never consent that their independence shall be discussed before any sovereign,” it was suggested that if the imperial courts would “lay down, as a preliminary, the sovereignty of the United States, and admit their minister to a congress,” a treaty might be commenced with Great Britain, “without any express acknowledgment of sovereignty until the treaty should be concluded.” The reply of Vergennes, addressed to Adams as *agent* of the United States, represented the necessity of certain preliminaries being adjusted before the American minister could be admitted to the congress. His answer, proceeding on the supposition that it was intended to acknowledge the independence of the American states, proposed “that the character of their minister should be ascertained before



any congress met, that he might take his place as soon as it opened. A second letter adverted to a most extraordinary suggestion—that the *separate states* of America should choose *an agent for each*, to attend the congress. Adams urged Vergennes not to countenance this idea, “apprising him, that though it had been mentioned only as a transient speculation, that he felt it to be a duty to inform him that congress would remonstrate against it in the most solemn manner.” No other correspondence passed upon this subject, but from the statement of La Luzerne to congress, it appeared that England insisted upon the dependence of America being pre-established, and that thus there would be no possibility of a mediation for peace.

Adams returned to Amsterdam, approved\* and obeyed his last instructions. In order to learn whether he should visit the president of the states-general, he consulted Vauguyon, observing “that congress had wisely enjoined it upon him to confer in the most confidential manner with his excellency, and that he had “made it a law to take no important step without his approbation.” Vauguyon waited the orders of his principal, and informed Adams that the minister “sees no objection to the visit on the subject of his memorial, provided, *without any official writing*, he limited himself to the inquiry, whether his memorial had been the subject of deliberation, and what answer he should communicate to congress.” The memorial was referred for consideration; and after some delay—after the capture of Cornwallis and the victories of Greene had changed the British ministry, and peace was inevitable,—France sanctioned his reception, and he was gratified by a public acknowledgment. During these interesting moments, he received a letter from the secretary of foreign

\* 6 D C. 198

affairs disapproving his having printed his memorial, and having urged his admission to court. His reply shows his views of the effects of this measure,\* and of the conse-

\* *John Adams to congress*—6 Dip Corres 258—"The proposition to the president being taken *ad referendum*, it became a subject of the deliberation of the sovereignty. The prince, therefore, and the whole court, are legally bound to treat it with respect, and me with decency, at least, it would be criminal in them to treat me or the subject with indecency. If it had not been presented and printed, I am very sure I could not long have resided in the republic, and what would have been the consequence to the friends of liberty, I know not. They were so disheartened and intimidated, and the Anglomans were so insolent, that no man can say that a sudden frenzy might not have been excited among the soldiery and people, to demand a junction with England, as there was in the year 1748. Such a revolution would have injured America and her allies, have prolonged the war, and have been the total loss and ruin of the republic.

"Immediately upon the presentation of my memorial, M. Van Berckel ventured to present his *requête* and demand for a trial. This contributed still further to raise the spirits of the good people, and soon after the burgomasters of Amsterdam appeared with their proposition for giving the prince a committee for a council, and in course their attack upon the duke, all which together excited such an enthusiasm in the nation, and among the officers of the navy, as produced the battle of the Doggerbank, which never would have happened, in all probability, but would have been eluded by secret orders and various artifices, if the spirit raised in the nation by the chain of proceedings of which the American memorial was the first and an essential link, had not rendered a display of the national bravery indispensable for the honour of the navy, and perhaps for the safety of the court.

"The memorial as a composition, has very little merit, yet almost every gazette in Europe has inserted it, and most of them with a compliment, none without any criticism. When I was in Paris and Versailles afterwards, no man ever expressed to me the smallest disapprobation of it, or the least apprehension that it could do any harm. On the contrary, several gentlemen of letters expressed higher compliments upon it than it deserved. The king of Sweden has done it a most illustrious honour, by quoting one of the most maternal sentiments in it, in a public answer to the king of Great Britain, and the emperor of Germany has since done the author of it the honour to desire in the character of Count Falkenstein to see him, and what is more remarkable, has adopted the sentiments of it concerning religious liberty into a code of laws for his dominions,—the greatest effort in favour of humanity, next to the American revolution, which has been produced in the eighteenth century.

quences of his firmness. It also discloses his indignation at the influence which had been exerted against him, charging expressly, that it was the design of the French

“As my mission to this republic was wisely communicated to the court of Versailles, who can say that this transaction of congress had not some influence in bringing De Grasse into the Chesapeake Bay? Another thing I ought to mention, I have a letter from Mr Jay, informing me that in the month of June last, M Del Campo was appointed by the court of Madrid to treat with him, the exact time when my memorial appeared at Madrid. You may possibly say, that my imagination and self-love carry me extraordinary lengths, but when one is called upon to justify an action, one should look all round. All I contend for is, that the memorial has certainly done no harm, that it is probable it has done some good, and that it is possible it has done much more than can be proved. A man always makes an awkward figure when he is justifying himself and his own actions, and I hope I shall be pardoned. It is easy to say, *‘il abonde trop dans son sens, il est vain et glorieux, il est plein de lui-même, il ne voit que lui,’* and other modest things of that sort, with which even your Malesherbes, your Turgots, and Neckers, are sometimes sacrificed to very small intrigues.

“Your veterans in diplomacy and in affairs of state consider us as a kind of militia, and hold us, perhaps, as is natural, in some degree of contempt; but wise men know that militia sometimes gain victories over regular troops, even by departing from the rules. Soon after I had presented the memorial, I wrote to the Duc de la Vauguyon upon the subject of inviting or admitting, in concert, the republic to accede to the alliance between France and America. The duke transmitted that letter to the Count de Vergennes, which produced the offer to congress from the king, to assist us in forming a connection with the republic, and the instructions upon the subject, which I shall execute as soon as the French ambassador thinks proper. With him it now lies, and with him, thank God, I have hitherto preserved a perfectly good understanding, although I differed from him in opinion concerning the point of time to make the former proposition.

“The evacuation of the barrier towns has produced an important commentary upon the conversation I had with the duke, and his opinion upon that occasion. How few weeks was it, after the publication of my memorial, that the Roman emperor made that memorable visit to Brussels, Ostend, Bruges, Antwerp, and all the considerable maritime towns in his provinces of Brabant and Flanders? How soon afterwards his memorable journeys to Holland and to Paris? Was not the American memorial full of matter for the emperor's contemplation, when he was at Ostend, Antwerp, and Bruges? Was it not full of matter, calculated to stimulate him to hasten his negotia-

"to keep us dependent upon them, that we might be obliged to accept such terms of peace as they should think would do for us"\*

tions with France concerning the abolition of the barrier towns? Was not the same matter equally calculated to stimulate France to finish such an agreement with him, as we have seen the evidence of in the actual evacuation of those towns? If this evacuation is an advantage to France and to America, as it undoubtedly is, by putting this republic more in the power of France, and more out of a possibility of pursuing the system of Orange by joining England, and my memorial is supposed to have contributed any thing towards it, surely it was worth the while

"The period since the 4th of May, 1781, has been thick sown with good events, all springing out of the American revolution, and connected with the matter contained in my memorial. The memorial of M Van Berckel, the proposition of the burgomasters of Amsterdam, their attack upon the duke of Brunswick, and the battle of Doggerbank, the appointment of Señor del Campo to treat with Mr Jay, the success of Colonel Laurens, in obtaining orders for the French fleet to go upon the coast of America, their victory over Graves, and the capture of Cornwallis, the emperor's journey to his maritime towns, to Holland, and to Paris, his new regulations for encouraging the trade of his maritime towns, his demolition of the barrier fortifications; and his most liberal and sublime ecclesiastical reformation, and the king of Sweden's reproach to the king of England for continuing the war, in the very words of my memorial,—these traits are all subsequent to that memorial, and they are too sublime and decisive proofs of the prosperity and glory of the American cause, to admit the belief, that the memorial has done it any material harm

"By comparing facts, and events, and dates, it is impossible not to believe that the memorial had some influence in producing some of them. When courts, princes, and nations, have been long contemplating a great system of affairs, and their judgments begin to ripen, and they begin to see how things ought to go, and are going, a small publication, holding up these objects in a clear point of view, sometimes sets a vast machine in motion at once, like the springing of a mine. What a dust we raise! said the fly upon the chariot wheel. It is impossible to prove that this whole letter is not a similar delusion to that of the fly. The councils of princes are enveloped in impenetrable secrecy. The true motives and causes which govern their actions, little or great, are carefully concealed. But I desire only that these events may be all combined together, and then, that an impartial judge may

At a dark period of the revolution, a few days after the plot of André had been discovered, congress, acting upon a proposition of the empress of Russia for the establishment of an armed neutrality addressed to the belligerents, empowered their commissioners to accede to its regulations.\*

It was hoped in this mode to induce the mediation of Russia, and soon after Dana was accredited as minister at that court. He was authorized to sign the convention for the protection of neutral commerce, either with Russia in conjunction with the other neutral powers, or separately with either of them.

Dana apprised Franklin of his commission, who advised its being communicated to Vergennes, and that his opinion should be taken, whether it would be proper to disclose his powers to the court of St. Petersburg, and obtain their approbation before he proceeded to Russia. From the latter part of this advice he dissented, for reasons to which Franklin assented; and though the conduct of Vergennes satisfied him that it was the policy of France not to render the United States "independent" by new allies, he proceeded on his mission.

His instructions indicated it as "a leading and capital point, that the United States should be formally admitted as a party to the convention of maritime powers," and

say, if he can, that he believes that that homely harmless memorial had no share in producing any part of this great complication of good

"But be all these speculations and conjectures as they will, the foresight of which could not have been sufficiently clear to have justified the measure, it is sufficient for me to say, that the measure was absolutely necessary and unavoidable I should have been contemptible and ridiculous without it. By it I have secured to myself and my mission universal decency and respect, though no open acknowledgment or avowal. I write this to you in confidence; you may entirely suppress it, or communicate it in confidence, as you judge for the public good."

\* October 5, 1780

directed him to communicate the general object of his mission to the resident envoy of France.

On arriving at St. Petersburg, he consulted that envoy, who evinced a decided repugnance to the disclosure of his objects or powers. As the fortunes of the United States rose, repeated applications were made to him for an introduction to the court. They were discouraged, until at last—tied down by his instructions, and convinced that, alone and unsustained, his reception would be refused—he apprised congress of his position, and of the necessity of *douceurs* to the Russian cabinet before a negotiation could be opened. Thus, by the complicated policy of France, America stood dumb before the powers of Europe.

This letter of Dana was referred to a committee, of which Madison was chairman. Though remote, yet Hamilton saw the advantages of opening a commerce with RUSSIA, provided a treaty could be formed on equal terms without bestowing presents. With this view, he moved that Dana “be informed that the treaties lately entered into for restoring peace, have caused such an alteration in the affairs of these states, as to have removed the primary object of his mission to the court of Russia—the acquisition of new supports to our independence. That with respect to a commercial treaty with Russia, they consider the benefits of it to this country in an extensive degree as rather remote, and have therefore little present inducement to enter into it besides a desire of cultivating the friendship of that court, and preserving a consistency with the disposition already manifested towards forming a connection therewith; and also of laying the foundation of a future intercourse, when the circumstances of the two countries may be more favourable to the same. That as *experience* will enable both nations to form a better judgment hereafter of the principles upon which that inter-

course may be most advantageously conducted, congress would wish any treaty now formed to be of *temporary* duration and limited to a fixed period. That in this view, unless he shall have already formed engagements or made proposals from which he cannot easily recede, of a more indefinite and extensive nature before this reaches him, he be instructed to confine the duration of the proposed treaty of commerce to fifteen years, agreeable to the term limited in a similar treaty with Sweden, and to stipulate expressly that it should be subject to the revisal of congress, and that in all matters he insist upon exact reciprocity." As to the proposed *douceur*, "that he be informed, as by the confederation no person holding offices under the United States are permitted to receive presents from foreign powers, so it is not consistent with the situation or policy of these states to adopt that practice in their transactions with other nations." After two divisions, one of which was on a modification of the prohibition of *douceurs* at the instance of Madison, so as to permit the payment of any that might have been stipulated, this motion failed.

On the following day, Madison proposed an instruction to *decline* making any propositions for a treaty with Russia unless Dana was pre-committed; and if so, to limit it to fifteen years, omitting the prohibition of presents. This was defeated, and a substitute offered by Elsworth, to limit the duration of any treaty then in progress to fifteen years, subject to revisal, passed unanimously.

The question of acceding to the armed neutrality had been raised in the course of this debate by Hamilton. He offered as an amendment this important declaratory resolution:—

"That though congress approve the principles of the armed neutrality founded on the liberal basis of a maintenance of the rights of neutral nations and of the pri-

vileges of commerce, yet they are unwilling, at this juncture, to become a party to a confederacy which may hereafter too far complicate the interests of the United States with the politics of Europe ; and, therefore, if such a progress is not yet made in this business as may make it dishonourable to recede, it is their desire that no further measures may be taken at present towards the admission of the United States into that confederacy." This amendment was referred, and a report subsequently passed, which stated, "that as the primary object of the proposed accession to the neutral confederacy no longer can operate, and as the true interest of these states requires they should be as little as possible entangled in the politics and controversies of European nations," it was inexpedient to renew the powers of Dana.

It approved the liberal principles of that confederacy, but directed the American commissioners, "in case they should comprise in the definitive treaty (with Great Britain) any stipulations amounting to a recognition of the rights of neutral nations, to avoid accompanying them by any engagements which shall oblige the contracting parties to support those stipulations by arms." Thus it is seen that at Hamilton's instance the great principle which should be especially the governing maxim of a republic, the principle of an absolute neutrality, was inscribed on the front of our national councils \* It is an evidence of the wisdom of this resolution, that each of the parties to the armed neutrality entered into engagements within thirteen years after its origin, in direct contravention of it.

France was still pursuing her system studiously. Various communications were made from time to time by La

\* Madison, vol 1, p 454, 460, does not give these important proceedings. He merely refers to the secret journal, and adds that the passage relating to the armed neutrality was generally concurred in, and assigns certain reasons for the disagreements as to the treaty of commerce with Russia.



Luzerne, the objects of which were to prepare congress for such concessions as it might be her policy to require. In one instance they were informed that if she did not obtain "for every state" all they wished, the sacrifice must be ascribed to necessity; and he expressed "his satisfaction at the extensive powers with which the ministers are invested as to the matter of boundary and the *truce*, which, he said, "the interests of France as well as of the United States, require to be as *long as possible*." They were subsequently reminded of the consequences to be apprehended from the rejection of "*reasonable terms*." Massachusetts understood this language, and on the twenty-seventh of October, seventeen hundred and eighty-one, instructed her delegates "in a future settlement of peace to insist" upon the fisheries. This act was referred\* the following month.

A report was then prepared by Madison,† containing new instructions to the American commissioners. By this report the previous territorial limits were to be insisted upon. As the common right of fishery was an attribute of sovereignty, France was urged to obtain a stipulation in favour of it, but if not attainable, by no means to surrender it. It required that there should be no engagement for the restitution of confiscated property, nor for the return of fugitives or exiles, as "any such stipulation would not only be dishonourable to the governments of these states, but obnoxious to the people at large"

"It is not," it added, "unworthy of the circumspection of his most christian majesty, to reflect whether the restoration of those persons *may not produce an unequal competition* with *his* subjects, in trade. Many among them, besides the advantage which they possess from the knowledge of our language, have accurately informed themselves

\* To Madison, Carroll, and Lovell

† Vol 1, No 20, MSS in department of state

of the nature of our commerce from actual experience." And it proposed, "that no stipulation should be admitted limiting the power of the United States to impose restrictions on British commerce, assigning as the motive, that this power "alone will leave to his allies the future opportunity of manifesting their preference of his interests to those of his enemies and rivals"

This report was amended,\* and on the eighth of January following was laid before the house. Having admitted that the fisheries and other claims of the United States were not to be included in the ultimatum, it instructed their ministers "to acquaint his most christian majesty, that, notwithstanding the occasion presented to the United States by the signal and various advantages gained over the enemy, of enlarging their ultimatum for peace, the firm reliance which congress have on the friendship and influence of his majesty, has determined them not to depart from their (previous) resolution, *by which all the objects of their desires and expectations*, excepting only the independence of the United States and *their alliance with his majesty*, are *eventually submitted to his councils*. But in order to make him more fully sensible of the extent and foundation of these desires and expectations, have thought it expedient that some observations should be made to him relative to the several objects which are most likely to fall within the compass of negotiation."

The objects were then stated. They were the boundaries—the fisheries—the exclusion of any provision for the restoration of confiscated property. Again adducing as the motive, that it will leave his allies the future opportunity of manifesting their preference of his interests to those of his enemies and rivals, "Congress," it declared, "do for these reasons, most *earnestly desire, expect, and entreat*," that his

majesty will spare no effort to exclude any restraint upon the United States from imposing on the trade of Great Britain any duties, restrictions, or prohibitions, which may hereafter be judged expedient, unless, and so far only, as a relaxation in this point may be essentially necessary for obtaining peace or the several objects above mentioned.

The views of the French ministry, and the nature and extent of their influence, are also shown in a despatch from Marbois, then secretary of the French legation, dated at Philadelphia, on the thirteenth of March, seventeen hundred and eighty-two.\* It stated "that a delegate from congress, lately arrived in Carolina, has, it is said, been chosen governor. He has communicated to the persons of most influence in this state the ultimatum of the month of . . . . . last, who approved of the clauses in general, and particularly that one which leaves the king master of the terms of the treaty of peace or truce, excepting independence and treaties of alliance. A delegate from South Carolina told me that this ultimatum was equally well known to persons of note in this state, and this had given entire satisfaction there. It is the same with regard to several other states; and I believe I may assure you, upon the testimony of several delegates, that this measure is approved by a great majority."

It apprised the court of the excitement in Massachusetts as to the fisheries, and suggested, as a means of preventing the success of the advocates of them, that the king should cause "his surprise to be intimated to congress or to the

\* Madison observes. "Marbois lately took occasion in our family to complain of ungenerous proceedings of the British against individuals, as well as against their enemies at large, and finally signified that he was no stranger to the letter transmitted to congress, which he roundly averred to be spurious"—Madison Papers, vol 1, p 531 See Life of Jay, vol. 1, p 146, which states that "he acknowledged it to be his," to "a gentleman employed in the foreign service of the United States"

ministers that the Newfoundland fisheries have been included in the new instructions; that the United States set forth *pretensions* without paying regard to the *king's rights*, and without considering the impossibility they are under of making conquests and keeping *what belongs to Great Britain*. A declaration that France was not bound as to the other fisheries was urged, while New-York, Charleston, and Penobscot, were in the enemy's hands,—“our allies will be less tractable than ever upon these points whenever they recover these important posts.” “There are some *judicious persons* to whom one may speak of giving up the fisheries. and the (*lands*) of the west, for the sake of peace. The advocates for peace are those who live in the country. The inhabitants of towns do not wish for it, but it is a happy circumstance that this division is nearly equal in the congress and among the states, since our *influence can incline the beam either for peace or war, whichever way we choose*.”

The intelligence of the capture of Yorktown, had determined the British ministry to renew their efforts to negotiate directly with the United States. A letter\* was addressed to Franklin by David Hartley, after a conference with Lord North, suggesting, as general grounds of a proposed negotiation tending towards peace under liberal constructions, that “the question of dependence or independence should remain sub-silentio and for a separate treaty. Franklin's reply treated with just indignation the idea of a separate peace, and quoted the treaty of alliance with France, stating that the “great difficulty may be easily got over, as a *formal acknowledgment of our independence* is not made necessary.”†

Another agent was despatched for a similar purpose to Adams, who opposed all idea of a truce, adding, that the powers of the commissioners were known.

\* December, 1781.

† 3 D. C. 284.

Lord North, whose object was represented to have been to draw the United States into a separate negotiation, and thus to excite the distrust of France, resigned. An overture was then made\* by his successors through Lord Cholmondely; and a letter was written by Franklin to Lord Shelburne, conveying his wishes for a *general peace*. This induced the mission of Richard Oswald to Paris, by whom an interview was had with Franklin and Vergennes, in which the readiness to enter into a joint negotiation by all the allies for a *general peace* was avowed.

A similar overture was at the same time made to Adams, in which it was inquired, "whether there was any authority to treat of a separate peace; and, whether there could be any accommodation upon any terms short of independence." He replied "that a *tacit* or express acknowledgment of independence was indispensable," and "that no treaty could be made separate from France" Franklin, alluding to this letter, intimated that from a recent "act" as to prisoners, it will be less difficult for them to acknowledge it expressly Referring to a former letter, Adams stated, "that when he hinted that he thought an express acknowledgment of independence might now be insisted on, he did not mean that we should insist upon such an article in the treaty. If they make a peace with the United States of America, this is acknowledgment enough for me."

Oswald was followed by Grenville. His first commission was merely to treat with France; a second was obtained, extending his powers to "any other prince or state," with instructions to propose the independence of the United States in the *first instance*, and "not as" a *condition of a general treaty*.

At this moment the Rockingham ministry was broken

\* April 14, 1782

up. Fox and his friends, who had advised the preliminary acknowledgment of independence, resigned, and Lord Shelburne, who, in conformity with the feelings of the king, had opposed it, took the first place in the cabinet. Acting upon his previous policy, Shelburne declared in the house of lords, "that whenever parliament should acknowledge the independence of America, the sun of England's glory was set forever."

As this acknowledgment became the vital question in the negotiation, it is necessary to advert to previous circumstances. It has been seen that Franklin had not considered this as a preliminary to be insisted upon, acting in obedience to the instructions of the fifteenth of June, seventeen hundred and eighty-one, dictated by France. When those instructions were received by him, in his letter to the president of congress, after stating\* "the satisfaction of Vergennes with the unreserved confidence in his court," and his assurance that it would not be abused, he observed, "that I cannot but think the confidence well and judiciously placed, and that it will have happy effects."

A not less decided approval of this commission was expressed by Adams; he accepted it with satisfaction, declaring that he thought "it a *measure essentially right*; that it was a demonstration of greater respect to the powers of Europe, and must be *more satisfactory to the people of America* than any former one."†

What his actual opinions as to France were, it is not easy to judge. He declared "that France was the natural friend of the United States, America the natural friend of France; that England was the natural enemy of France, and therefore of the United States."‡ But he also stated, "that to form immediate commercial connections with that

\* 3 D. C. 236.

† 6 D. C. 160-2.—October 4, 1781.

‡ 5 D. C. 105.

half of Europe which ever has been, and with little variation ever will be, *opposite* to the house of Bourbon, is a fundamental maxim of that system of American politics which I have pursued *invariably since the beginning of this war.*"\* He avowed that "every suspicion of a wavering disposition in (her) court concerning the support of American independence is groundless, is ridiculous, is impossible;"† but he also asserted, that "the policy of France, from his first observation of it to this hour, had been as averse to other powers acknowledging the independence of America, as England had been."‡

When these instructions were received by Jay, he acknowledged to congress the confidence evinced in him, and his readiness to serve in any capacity. But he remarked, "As an American, I feel an interest in the dignity of my country, which renders it difficult for me to reconcile myself to the idea of the sovereign, independent states of America, submitting, in the persons of their ministers, to be absolutely governed by the advice and opinions of the servants of another sovereign, especially in a case of such national importance." He admitted the "gratitude and confidence" due to France, that it would probably be in her power "almost to dictate the terms of peace;" but he declared that he did not believe that America, thus casting herself into the arms of the king of France, would advance either her interest or her reputation with that or other nations, and therefore entreated to be relieved from a station, where, in character of minister, he must receive and obey, (under the name of *opinions*,) the directions of those "on whom he really thought no American minister ought to be dependent."§ This letter was dated in September, seventeen hundred and eighty-

\* 7 D. C. 255.

† 4 D. C. 292

‡ 6 D. C. 509.

§ 7 D. C. 451.

one. It was followed by another, asking permission, in consequence of ill health, and because no prospect existed of any benefits from Spain, to visit either France or Holland. Congress passed a resolution approving his opinions as to the Mississippi, and had appointed him a commissioner to treat for peace, yet, at the moment when every probability existed of a negotiation being opened at Paris, would not grant him permission to leave Spain, and proceed to the place where this negotiation was to be conducted. Other motives may have influenced their decision; but it is not an improbable conjecture, that his sentiments as to the policy of France, and the indignation he had expressed as to his instructions, had weight in this determination.

The daily subterfuges of Spain, countenanced by the ambassador of France, satisfied Jay that Spain had resolved not to acknowledge the independence of the United States. He declared, "that many reasons induced him to think that France did not, in fact, wish to see us treated as independent by other nations until after a peace, lest we should become less manageable in proportion as our dependence on her shall diminish; and that England would be the first nation to acknowledge that independence." Yet he properly affirmed, "that as long as France continued faithful, that we ought to continue hand in hand to prosecute the war, until all their as well as all our reasonable objects can be obtained by a peace; for that he would rather see America ruined than dishonoured."

Having received an invitation from Franklin to join him, Jay soon after proceeded to Paris, where he had the patriotism to act upon his commission, and the firmness to disregard his instructions. On his arrival there, on the twenty-third of June, he found the aged minister alone; Adams being yet in Holland, Laurens a prisoner in England, Jefferson, deterred, as he says, "by the uncommon



vigilance of the enemy's cruisers," remaining in America.\*†

The British minister had in the interval employed agents to ascertain the disposition of the American commissioners, as to a waiver of an express recognition of the independence of their country. They reached Paris after Jay's arrival there, and returned convinced that every attempt to inveigle the United States must fail.

These overtures alarmed Vergennes.‡ He saw that the capture of Yorktown had placed England and the United States in a position which must result in peace. How to control its terms, was with him the only remaining question, wearied as France was with the continued demands for aid. His efforts to exclude the United States from a general congress, and to prevent a direct negotiation with Great Britain, had succeeded. Thus Paris was still the seat of negotiation. It was important to thwart any attempts

\* Jay's Life, vol 1, p 170.

† "Such was the state of my family, that I could not leave it, nor could I expose it to the dangers of the sea, and of *capture* by the British ships then covering the ocean. I saw, too, that the labouring oar was really at home, where much was to be done of the most permanent interest, in *new modelling our governments*, and much to *defend our fane and firesides* from the desolations of an *invading enemy*, pressing on our country in every point."—Jefferson's Works, vol 1 p 41

‡ "The letter in the first page of the Gazette of this morning," Madison wrote Randolph, "was written by Mr Marbois. In an evening of *promiscuous* conversation I suggested to him my opinion that the insidiousness of the British court, and the good faith of our ally, displayed in the late abortive attempt of the former to seduce the latter, might with advantage be made known, in some form or other, to the public at large. He said he would think of the matter, and next day sent me the letter in question, with a request that I would revise and translate it for the press, the latter of which was done. I mention this, that you may only appreciate facts and sentiments contained in this publication." This was suggested by propositions of England for a separate peace—called by Madison an "insidious step"—1 Mad 131, 141. It may be asked, Did England form the alliance against herself? Was she bound to respect it?

to transfer it elsewhere. With this view a verbal communication was made by the French minister to the secretary of foreign affairs, calling upon congress to declare, "that in case commissioners offered to treat upon this continent, they should be referred to the ministers of the United States, who are provided with *instructions* on this subject in Europe; that the court of London should address itself to these, and that it is *impossible that the seat of negotiation should be in America*"\*

This suggestion produced the desired result. A resolution† was reported by Madison, which declared, in case such overtures should be made, that "congress will not depart from the measures which they have heretofore taken *for preventing delay*, and for conducting the discussions in confidence and in concert with his most christian majesty."

Madison's report of January had, in the mean time, remained with the committee to which it was referred. It was not brought forward until August, when a paper was presented to congress, prepared by Edmund Randolph, containing facts and observations on the claims not included in the ultimatum of the fifteenth of June, seventeen hundred and eighty-one.

This report was in conformity with the previous one of Madison. A motion for revoking the power given to France was again made. "It was pushed," Madison wrote Randolph, "with the expected earnestness, but was *parried*, and will issue, I believe, in an adoption of your report, with a representation thereupon to the court of France."‡ §

\* 3 D C. 297.

† May 31, 1782 — 3 S J 138.

‡ Madison Papers, v 1, p 159.

§ "In my last I informed you that the motion to rescind the control given to France over the American ministers had been *parried*, and would probably end in an adoption of your report. It was *parried* by a substitute so expressed as to give a committee sufficient latitude in reporting without

Another conference was had in September with the French minister; on this occasion, extracts from several letters addressed to him by the Count De Vergennes, were read: one of the ninth of April, stating that "their joint efforts would be crowned with success, if on the one hand making the greatest exertions to procure the completest satisfaction, they on the other hand confined themselves within such bounds of *moderation*\* as would give no umbrage to any one of the powers at war with Great Britain." Others of the second of May and twenty-eighth of June were produced, intimating that it was now evidently the object of Great Britain to lessen their exertions on this continent, to adopt a defensive war, and having succeeded in one of these objects, to return against the United States with redoubled efforts. Congress were exhorted to declare that no peace but a general one would be attended to; they were assured that when the negotiations were entered into with sincerity, France would exert her good offices *on all points* connected with the prosperity of the United States; that congress were themselves sensible of the distinction between the conditions of *justice* and *rigour*, and those of *convenience* and *compliance*, which depended on the good or bad situation of affairs; that though the circumstances of the allies were very promising, such events might happen as might make it *advisable* to adopt the part of moderation. The necessity of England being convinced of the impossibility of treating separately was urged, and they were called on to proclaim that the United States would not make peace without the concurrence of their ally, and that if any

implying on the part of congress a design to alter past instructions; the composition of the committee appointed according well with the object of the substitute," &c —Madison to Edmund Randolph —Madison Papers, v 1. 160 —August 20, 1782

\* September 24, 1782

overtures were to be made, the American plenipotentiaries were sufficiently empowered to receive them.

This communication was referred to a larger committee. Their report, after expressing the utmost confidence in the assurances and good offices of France, declared,\* that “considering the territorial claims of these states as heretofore made, their participation of the fisheries, and of the free navigation of the Mississippi, not only as their *indubitable* rights, but as *essential* to their prosperity, they *trust* that his majesty’s efforts will be successfully employed to obtain a sufficient provision and security for those rights. Having avowed, “that any claim of restitution or compensation for property confiscated, will meet with insuperable obstacles, not only on account of the sovereignty of the individual states,” but of the wanton depredations of the enemy, they express a further trust, that “the circumstances of the allies at the negotiations for peace will be so prosperous, as to render these expectations *consistent* with the *spirit* and *moderation recommended by his majesty*.†

The wishes of the king of England had, during this period, been consulted by his ministry, and an act was passed “to enable him to conclude a peace or truce” with certain “COLONIES” therein mentioned. On the twenty-fifth of July, Oswald received a warrant to treat in pursuance of this act. This warrant was submitted to Vergennes, Franklin, and Jay.

Vergennes gave his opinion that it might be acted upon, “that names signified little, that an acknowledgment, instead of preceding, must, in the natural course of things, be the effect of the treaty, and that it would not be rea-

\* October 3, 1782.—3 S J 243

† This report was from Madison, Duane, Rutledge, Montgomery, and Carroll

sonable to expect the effect before the cause." He urged an exchange of powers with the British commissioners, on the ground that an acceptance of them would be a *tacit* admittance of it.

Franklin had always intended to secure the independence of the United States; but as to the mode, it has been seen that he would have been satisfied with a *tacit* acknowledgment of it. Adhering to this opinion, he concurred with Vergennes, and sustained this course on the ground that it was an acquiescence with the views of that minister, as prescribed by his instructions. Jay dissented from this opinion; he considered the instructions of seventeen hundred and seventy-nine, framed by Gouverneur Morris, as indicating the sentiments of the nation before its counsels had been influenced by France; and although he then voted for a *tacit* recognition, the position of the country had changed—the American arms had triumphed, and England had resolved on peace.

These considerations would have been sufficient of themselves, but there was another which could not have been without weight. Whatever policy might have been previously adopted, the public declaration of Lord Shelburne left no alternative consistent with the honour of the country, but an open, explicit, preliminary acknowledgment of its independence. Jay did not conceal from Franklin the suspicions which the readiness of Vergennes to waive this point had produced. The French minister had, on previous occasions, when he knew that such a requisition was an insuperable bar to all negotiation on the part of England, declared that it must be insisted upon. That with all the advantages in his favour, so practised a statesman should have abandoned this opinion, if he had ever seriously entertained it, without some motive, was not to be supposed. The only adequate motive to be as-

signed was, a desire to defer this acknowledgment, to make it an article of treaty, and thus dependent upon all the contingencies of such a treaty, until, as the Spanish minister had intimated, the conclusion "of a general peace." Spain had claims to which the United States were unwilling to accede; France had demands upon Great Britain, to the attainment of which, the support of Spain was important. The United States were under no engagements to continue the war for the promotion of the views of Spain. But the treaty of alliance compelled them not to cease hostilities until their independence was secured. The British ministry held their places on the tenure of peace with America; but if that had been effected, Vergennes well knew that the temper of the British nation would have sustained a war with France or Spain from motives of policy or resentment. Thus, not only the question whether to promote the designs of Spain as to the American territory, or to obtain advantages from Great Britain, or even a general peace might depend on deferring the recognition by England of the United States as a nation. The strong repugnance of the British monarch to an express acknowledgment might also have induced a belief, if that should be relinquished by her instrumentality, that France might gain an equivalent for this service. Acting upon a full view of his position, Jay apprised Oswald of his objections to his commission; who, to remove them, disclosed to him the instructions to Sir Guy Carleton to admit independence in the *first instance*. Jay avowed that he would have no concern in any negotiation "that did not consider his countrymen as independent people," and drafted a commission to be issued by Great Britain.

A second discussion arose with the French minister on the reception of Oswald's powers; Vergennes remained of his former opinion, and asserted that an acknowledg-

ment previous to a treaty was unnecessary, denied that it was sufficient for the United States to be treated with on the ground of equality as other nations were, but insisted that an explicit acknowledgment of independence *in the treaty* was "very necessary," to prevent future claims. The reply of the British ministry to Oswald proceeded on the idea of an acknowledgment as an article of treaty.\* This course was admitted by him to have been adopted in consequence of the intimation of Vergennes that it would be sufficient.

A strong expression of the determination not to permit the question of independence to be the subject of a treaty, and thus implying that America was not then independent, was embodied in a letter from Jay to Oswald, which was submitted to Franklin, who disapproved it, lest it might possibly be productive of future embarrassment, and as involving a departure from their instructions. After weighing this objection, Franklin having declined to sign this letter, Jay gave it to Oswald. Vergennes had, meanwhile, proposed that Oswald should *by letter* declare that he treated with the United States as independent, an expedient which was, of course, rejected. The fixed purpose of France was manifested upon another occasion. In consequence of an intimation to that effect by the court of Spain, a conference was held with their envoy at Paris. In this conference, the claims of Spain having been set forth, Jay, without entering into the discussion, presented a copy of his commission, and asked if the Spanish envoy's powers were equally extensive.

He affirmed that they were, but did not produce them. Vergennes, who was present, remained silent; but Rayneval, the secretary of the council, urged that this preliminary should be dispensed with.†

\* 8 D. C. 143 — Jay's Life, v. 1, p. 144.

† 8 D. C. 201

Having ascertained that through the interference of France, the unsatisfactory powers to Oswald were framed, and that Rayneval had proceeded secretly to London, there was enough to awaken the suspicions of any prudent minister. These suspicions were confirmed by the disclosure to Jay of the contents of the recent despatch of Marbois, and on the following day he sent a secret agent to England, to represent the absolute necessity of a preliminary acknowledgment of independence, of a mutual participation in the fisheries and in the navigation of the Mississippi being conceded, and that it was the policy of France to postpone this recognition. This communication had the intended effect. A commission\* to Oswald, "to negotiate with commissioners vested with equal powers by and on the part of the UNITED STATES OF AMERICA," was received in Paris late in September.

The points now to be adjusted were the boundaries, the fisheries, and the claims of the loyalists.

The progress of the negotiation confirmed the suspicions entertained by Jay as to the policy both of France and Spain, with respect to the territorial limits of the United States. The importance of obtaining the alliance and aid of the Spanish ministry was such as to have led him to think, previous to his mission, that a cession might wisely have been made of the navigation of the Mississippi, as an inducement to such an alliance. But when Spain had, in order to promote her own views, entered into the war, when she refused to recognise the United States as a nation, and failed in her engagements as to aid, every inducement to such a concession ceased; and he dissuaded congress from granting it, on the ground that it would render a war with Spain unavoidable, and "*that he should look on his subscribing to the one, as fixing the other.*"

\* Sept. 21, 1782.



In the project of a treaty, in obedience to his instructions, which he was aware were known to Spain, he offered this cession, but upon his own responsibility annexed a declaration, "that if its acceptance, together with the proposed alliance, should be postponed to a general peace, the United States would not be bound by this offer" Circumstances occurred subsequently to this, which had a strong influence on the action of congress. On the capture of Pensacola, Spain, instead of providing in the capitulation that the British troops should not serve against the United States, permitted them to reinforce their garrison at New-York. Similar terms were granted in the surrender of the Bahama islands.

These occurrences excited strong indignation in America, which was increased by the unjustifiable interruption of the Havana trade,\* in consequence of which, American vessels were detained a long time in the service of Spain, no compensation for the delay made, and then sent away without convoy, and many of them captured. But the event which made most impression was an expedition of a party of Spaniards and Indians from St. Louis, who seized a small post on the St. Joseph, occupied by a few English soldiers, took possession of it with its dependencies, and also of the river Illinois, in the name of his catholic majesty, and displayed the standard of Spain as a formal assertion of her title. This act was decisive of the purposes of that government.

A committee was appointed by congress to revise the instructions to Jay, (prepared by Madison,) not to insist upon the free navigation of the Mississippi. Their report would have exposed the United States to the risk, if Spain chose to claim it on the ground of the secret article with France, of being compelled to conclude a treaty "on her

first requisition " It was amended on the next day\* at the instance of Rutledge, so as to direct him " to *forbear* making any overtures or entering into any stipulations in consequence of overtures previously made by him ; and he was authorized to leave Spain, and go into any other part of Europe, whenever the state of his health might require it."

If the American commissioner had any doubts remaining as to the policy of Spain, they were removed by the disclosure of the contents of an intercepted despatch from the French ambassador at Madrid to Vergennes. This document represented the strong aversion of the catholic court to any American settlements on the Mississippi, as they would engross the trade of New Orleans and Mexico ; that Spain was determined to make the Indians a barrier between their possessions ; " that she would find the means, if necessary, to obstruct their progress ; and that France could not afford" Spain a greater proof of "her" attachment, than in employing "her" influence in the United States to divert their views from the navigation of the Mississippi †

In the conference which has been mentioned between D'Aranda and Jay on the twenty-ninth of June, the former expatiated on the rights of Spain to a large tract of country east of the Mississippi, as conquests from England, referring to the post recently taken on the St. Joseph, and remarked as to such part of that region as she had not conquered, that it was the territory of free and independent nations of Indians, whose lands could not be claimed by the United States.‡ She then proposed a longitudinal line as an arbitrary boundary, which would have dissevered from the United States a large portion of her western territory. "The extravagance of this line" was indi-

\*Aug. 1, 1782.

† Life of Jay, vol. 1, p 139.

‡ 8 D. C. 150

cated by Franklin and Jay to Vergennes, but he, as before, was reserved. The secretary Rayneval took up the discussion, urged Jay again to treat without any exchange of powers with D'Aranda, and subsequently submitted to him a memoir which defended at length the claims of Spain, and proposed to the United States the admission of another arbitrary limit.

This proposition implied that Great Britain was entitled to all the country north of the Ohio, and left in question the rights of the United States to the extensive western region above the thirty-first degree of latitude. These suggestions were considered as part of that policy which had instructed\* De Grasse "to withdraw his fleet when the enemy were at our feet, and a month's delay would have reduced either New-York or Charleston;" and which would have postponed the recognition of independence to the conclusion of a general peace.

The desire of France to confine the limits of the United States, was again evinced about the time of the return of Oswald's full commission. Upon an intimation by D'Aranda of a wish to commence the negotiation, Jay expressed his readiness when their powers should be exchanged. D'Aranda inquired whether Jay had not been apprised of his having been authorized by the prime minister of Spain. He admitted it, but required the exchange of their commissions. This was objected to on the ground that Spain had not acknowledged our independence. Vergennes urged a treaty with Spain in the same manner as with France—that Spain did not deny the independence—and proposed that a conference should be held without saying a word about it, stating that an acknowledgment of it would be the *natural effect* of the proposed treaty. Jay replied, that, being independent, "both the terms of his

commission and the dignity of America forbade his treating on any other than an equal footing."

On the same occasion, Rayneval urged the adoption of the conciliatory line he had proposed, and the advantage of placing the Indians on each side of it under the protection of the respective sovereigns. Jay answered, that as far as these demands affected the Indians, it was a question between them and the United States, and remarked upon the *recency* of these territorial claims. Rayneval in reply observed, "that the Spanish prime minister had not understood the subject, and imputed his former ideas of the United States extending to the Mississippi to his ignorance of that matter." A reply that left it not difficult to conjecture by whom these recent claims had been suggested.

That Spain should have sought these advantages, might have been anticipated from the policy of that nation. How France could have sustained the proposed mutilation according to an arbitrary line, involving a principle by which it might have been extended much further east, it is difficult to conceive, when the grounds of the American pretensions are understood. By the treaty of Paris, all the region claimed by the United States had been ceded to the sovereign of Great Britain. This, by charter, she had granted, and defined as extending to the Mississippi. Thus it was held previous to the revolution, and thus under the same limits it (by the revolution) devolved upon those who had acquired the sovereignty of this country.

France had acknowledged the independence of the United States; she had by treaty admitted their territorial claims; she had by treaty guarantied all the possessions which then belonged to them, to take effect at the instant of a war between France and Great Britain; which war, preceding that between Spain and England, precluded all pretensions on the part of Spain by right of conquest.

Immediately after the commission was received by Os-

wald, the commissioners entered upon the negotiation, with an express agreement on each part, that it should not be disclosed to France. It commenced on the first of October, and on the eighth of that month, articles, of which the draft was prepared by Jay, were mutually signed.

After an express preliminary acknowledgment of the independence of the United States, their boundaries were defined as prescribed in the original ultimatum of seventeen hundred and seventy-nine. The right of fishing and *of curing* fish at the accustomed places, as urged by Gouverneur Morris, the author of this ultimatum, but then rejected by congress, was granted. The navigation of the Mississippi was declared to be forever free and open to both nations, and the citizens and subjects and ships of each nation were to enjoy the same protection and privileges in each other's ports and countries, respecting commerce, duties, and charges, as were enjoyed by native subjects, saving to the chartered trading companies of Great Britain their exclusive rights.

The decision of the British cabinet upon these articles was not received until the twenty-third of October, when it was stated that objections arose as to the extent of the boundaries and the absence of any provision for the *tories*, to confer upon which, a person was deputed from London.

Three days after, on the twenty-sixth\* of October, Adams arrived at Paris, and co-operated in support of the terms which Jay had been the principal instrument in obtaining. It has been studiously laboured to give to Adams the chief merit in this transaction ; but it is only necessary to advert to the state of the negotiation when he arrived at Paris, to decide to whom it belongs.

\* Adams to Livingston, 6 D. C. 436

On resuming the negotiation, an effort was made to contract the limits of the United States, to bring the boundary to the Ohio, and to settle the loyalists in the vicinity of the Illinois.

The court of St. James insisted upon retaining all the territories comprehended within the province of Quebec, by the acts of parliament respecting it. They contended that Nova Scotia should extend to the Kennebec, and claimed all the lands in the western country and on the Mississippi not expressly included in our charters and governments, and also all not previously granted by the crown. But the limits originally proposed were adhered to, and, with some concessions to the east and north, were acknowledged.

The points chiefly contested were the restitution, compensation, and amnesty to the adherents of Great Britain, and a limitation of the fisheries

The former of these was most urged. It will be recorded to the honour of England, that it was the first insisted upon and the last relinquished, and relinquished not of choice, but because the British government were satisfied that congress did not possess the power to make or to fulfil the necessary stipulations. A substitute was inserted recommending the restitution of the confiscated estates. No further confiscations nor prosecutions were to be permitted, and all existing prosecutions were to be discontinued. An express stipulation was also made, that no legal impediment should be interposed to the full recovery, in sterling money, by the creditors of either side, of all bona fide debts previously contracted. All prisoners were to be discharged; the American possessions were to be evacuated without the destruction or deportation of negroes or other American property; and conquests subsequent to the execution of these articles were to be restored without compensation. A separate and secret

article was added, defining the boundary between West Florida and the United States, in case Great Britain should recover, or be put in possession of it at the conclusion of the war. The questions as to the fisheries were much debated, and were satisfactorily adjusted, after a demand of compensation for injuries being proposed by Franklin and abandoned.

The policy of France with respect to these particulars, also produced in the minds of the commissioners much dissatisfaction. The details of the discussion as to the fisheries are not preserved with sufficient minuteness to enable a very accurate judgment to be formed of the several propositions made. Acting upon the instructions of the fifteenth of June, seventeen hundred and eighty-one, Franklin made no mention of this great interest until some time after the arrival of Jay.

His demand of this right, which congress declared was "no less indispensable in its exercise" than "indisputable in its principles,"\* was made to the British negotiator early in July. It appears that this important claim, then made the first time, created not a little surprise in the breast of the British commissioner.

It had been declared by Lord Chatham that the "exclusive right" to the fisheries "was an object worthy of being contested by the extremities of war." The reluctance of England to the participation of the Americans in a pursuit which, as a nursery of seamen, would enable them to contest the supremacy of the ocean, may be supposed to have created obstacles on the part of that maritime power.

Former events had shown to France the importance the English crown attached to it; and hence, had a disposition existed to interpose an obstacle to a treaty, none other would have been more readily seized upon. What shape

this question assumed in the progressive negotiations between Great Britain and France, is not known; whether that of an equal division of the fisheries, with a total exclusion of the people of the United States, or a limitation of them merely to the coast fishery; but the evidence is complete, that France, if she did not oppose, at least looked coldly on the claims of the United States.

In a conversation held between Jay and Rayneval, (after Great Britain had resolved to grant them,) to an inquiry by the latter, "what we demanded as to the fisheries," on being informed "that we insisted on enjoying a right in common to them with Great Britain, he intimated that our views should not extend further than a *coast* fishery, and insinuated that pains had lately been taken in the eastern states to excite their apprehensions and increase their demands on that head. We told him that such a right was essential to us, and that our people would not be content to make peace without it; and Franklin explained very fully their great importance to the eastern states in particular. He softened his manner—observed that it was natural for France to wish better to us than to England; but as the fisheries were a great nursery for seamen, we might suppose that England would be disinclined to admit others to share in it, and that for his part he wished there might be as few obstacles to a peace as possible. He reminded us also, that Oswald's new commission had been issued *posterior* to *his arrival* at London."

The only remaining question that excites attention upon which the course of France is to be investigated, is as to the proposed stipulations with respect to the loyalists. In the despatch from Adams,\* the representations made by the French envoy to congress, and the opinion of Vergennes in favour of clemency and restitution, are imputed



to a knowledge that the American commissioners were instructed not to make any express engagements in their behalf, and that congress had not a constitutional authority to make them; and it is suggested that the pertinacity of England in protecting her adherents, was "stimulated by French emissaries." Congress had indeed declared that it was their "particular wish" that the return "of these fugitives and exiles from their country" should "be most strenuously opposed,"\* and that any stipulations for their return were dishonourable to the government of the states and obnoxious to the people at large. But that France should have interposed her influence in their behalf, against a policy so impolitic and harsh, may be ascribed to other motives—to the feelings of a nation which regarded loyalty as a virtue—which supposed that clemency was the proper attribute of a crown, and would not, at least on the part of her ally, be a theme of reproach.

Vergennes, upon an annunciation being made to him of the signature of the treaty, addressed a sharp rebuke to Franklin for having concluded the preliminary articles without any communication to him, "although the instructions from congress prescribe that nothing should be done without the participation of the king." Franklin mildly answered, that nothing had been agreed in the preliminaries contrary to the interest of France, "and that no peace was to take place between us and England till France concluded hers." He disclaimed any intentional disrespect to the king, and asked to be excused "this single indiscretion."†

In a subsequent letter to the American government, after stating that Vergennes had been satisfied on this point, he observed, in reference to a possible censure by congress, "that their nomination of five persons to this ser-

\* 3 S. J. 159. Report of Lovell, Carroll, and Madison    † 4 D. C. 57.

vice, seems to mark that they had some dependence on *our joint judgments*, since one alone could have made a treaty by direction of the French ministry as well as twenty." He imputes the conduct of France to an apprehension that if America should have claimed too much, the opportunity of peace might have been lost; comments on the suspicions entertained by Adams that Vergennes and he "were continually plotting against him, and employing the ministers of Europe to depreciate his character;" but at the same time makes the declaration, "I am persuaded, however, that he means well for his country, is always an honest man, often a wise one, but sometimes and in some things absolutely out of his senses."\*

The result of these negotiations was received by the people of America with a burst of approbation. Not only had the United States obtained all, but more than they could have expected; every essential right had been secured—no sacrifice had been made of the national honour. But a different feeling existed with a party in congress; that which the nation approved, they deemed deserving of censure.

The American commissioners, on the annunciation to congress of the conclusion of the preliminary treaty, explained the motives which had induced them to approve of its leading articles. As to the boundaries, they stated the extent of the British claims—the hostility of France and Spain to the American interests—and the advantageous limits which had been established.

The provision for the British creditors was defended on the obvious principles of justice. The articles as to the refugees were represented as having been assented to by Great Britain because it was particularly important to its administration then to conclude the negotiation. The

concealment of the provisions of the treaty from France was justified on the ground that they "did not correspond with the policy of France." The stipulation to act "in confidence and in concurrence with her," was founded on a mutual understanding that she would assist the United States in obtaining their "indubitable rights;" and having opposed them, they insisted she was no longer entitled to that confidence, and that the injunction "to do nothing without the advice and consent of that court," could not have intended a consultation to procure an injury.

The separate article, they observed, was added from cogent motives. Deeming it important to extend the limits of the United States to the lowest possible point on the Mississippi, it was thought advisable to impress Britain with a strong sense of the value of this navigation to her future commerce on the interior waters from the Saint Lawrence to the Gulf of Mexico, and thus to render her averse to the claims of Spain. These objects militated against each other, because to enhance the value of the navigation, was also to enhance the value of the contiguous territory, and disincline England to a dereliction of it. This was effected by a composition: Great Britain withdrew her pretensions above the Yazoo, and the United States ceded all below it, in case that power should repossess Florida; both parties retaining the common use of the Mississippi. This composition was inserted in a separate article, expressly in order to keep it secret, lest Spain should have been irritated and have retarded the conclusion of the negotiation. France had no interest in this matter—she was not entitled to be informed of it.

Jefferson had been appointed early in the session a member of this commission, and was at this time engaged in the department of state preparing for its duties. The advices removing the motives to his departure, his appointment was revoked.

Under date of the sixth of November, the secretary of foreign affairs had written "that the clauses of the commission to Mr. Fitzherbert, which were designed to include the United States, were strong indications of the extreme reluctance of the British to give up their supposed dominion over this country." In another letter, under the supposition that England would withhold the fisheries, he observed, "they are essential to some states, and we cannot but *hate* the nation that keeps us from using this common favour of Providence."

Notwithstanding the evidence these despatches gave that the clauses in the commission which he had repudiated were inserted with the approbation of Vergennes, and although England had yielded the fisheries in despite of the efforts of France to keep us from "using this common favour of Providence," a criminary letter was addressed by him to congress, asking their directions as to the reply to be given to these communications.

In this letter, after a sharp condemnation of their conduct, he proposed three resolutions to be passed: one directing him to communicate the secret article to the ambassador of France, in such manner as will best remove any unfavourable impression of the sincerity of these states or their minister; another, informing the American commissioners of this act, and of the reasons which influenced congress, and instructing them to agree that in whatever hands West Florida might remain at the conclusion of the war, the United States will be satisfied with the limits in the separate article; and a third, declaring the "*sense*" of congress that the provisional articles "are not to take place until a peace shall have been *actually* signed" between France and Britain.

The preamble to these articles declared, "that the treaty of peace which they were to constitute, was not to be concluded until terms of a peace shall be *agreed upon* be-

tween Great Britain and France. His Britannic majesty shall be *ready* to conclude such treaty accordingly." This preamble, he declared, was so expressed, as to render it "very doubtful whether our treaty does not take place the moment France and England have agreed on the terms of their treaty, though France should refuse to sign till her allies were satisfied."

Had the proposed resolution passed, its effect would have been to keep the question of peace or war open until France should have satisfied her allies;—to have made the termination of this controversy depend on the disposition of Spain to relinquish her extravagant pretensions to the western territory of the United States.

When the character of this treaty is considered, it is not to be supposed that a communication of such a complexion would have been prepared on the sole responsibility and suggestion of its author, and without confidence in the strength of the party in congress devoted to France. On its being read, a vote of CENSURE was proposed as to a negotiation which must forever command the gratitude of the American people, and in which Jay took "a lead no less honourable to his talents than to his firmness."

This vote of censure was sustained by Madison;\* but

\* Judge Peters, who was a member of this congress, and who offered an approving resolution, wrote to Jay.—

"I voted against an unwarrantable philippic of censure, brought forward in congress against your conduct to please the French. I thought then, and do now, that it was a mean compliance. Our friend Madison, who was generally *then* with us, left his friends on that subject, and I never liked him the *better* for it." Jay replied: "After my return in 1784, I was informed of the debate in congress on the proposed resolution which you mention. *In my opinion Madison voted consistently.*"—2 Jay's Life, 401, 404

Referring to a resolution of Virginia, Madison wrote Randolph, January 7, 1783—"The preliminary requisition of an acknowledgment of our independence, in the *most ample manner*, seems to be still more incautious, since it *disaccords* with the treaty of alliance which admits the sufficiency of a

there were those in that senate who would have incurred any sacrifice, rather than a sacrifice of the dignity of their country to avert the displeasure of any foreign power.

It was resisted, and resisted firmly, perseveringly, and successfully.

Different substitutes were offered. That of Hamilton declared, that "as congress are desirous of manifesting at all times the most perfect confidence in their ally, the secret article should be communicated to the minister of France by the secretary of foreign affairs; and that he inform the commissioners of the reasons for that communication, expressing to them the desire of congress that they will, upon all occasions, maintain perfect harmony and confidence with an ally to whose generous assistance the United States are so signally indebted; that congress entertain a high sense of the services of these commissioners, for their steady attention to the dignity and essential rights of the United States, and in obtaining from the court of Great Britain articles so favourable and so important to those interests."\*

These substitutes were referred, and on the nineteenth of March, a report was made, the draft of which still exists with encomiastic interlineations in Hamilton's hand. During the debate on this report, intelligence of the sig-

tact acknowledgment " Also, March 18, 1783—"The latest letters from our ministers express the greatest jealousy of Great Britain, and secondly, that the situation of France between the interfering claims of Spain and the United States, to which may perhaps be added some particular views of her own, having carried her into a discountenance of our claims, the suspicions of our ministers on that side gave an opportunity to British address to decoy them into a degree of confidence, which seems to leave their *own* reputations, as well as the safety of their country, at the mercy of Shelburne In this business Jay *has taken the lead, and proceeded to a length of which you can form little idea* Adams has followed with cordiality; Franklin has been dragged into it "

\* Vol 2, No 25, state department

nature of the preliminary articles was received, and on the fifteenth of April the instrument of ratification prepared by Hamilton was agreed to.

He wrote to Jay :—"Though I have not performed my promise of writing to you, which I made you when you left this country, yet I have not the less interested myself in your welfare and success. I have been witness with pleasure to every event which has had a tendency to advance you in the esteem of your country ; and I may assure you with sincerity, that it is as high as you can possibly wish.

"The peace, which exceeds in the goodness of its terms the expectations of the most sanguine, does the highest honour to those who made it. It is the more agreeable, as the time was come when thinking men began to be seriously alarmed at the internal embarrassments and exhausted state of this country. The New-England people talk of making you an annual *fish-offering*, as an acknowledgment of your exertions for the participation of the fisheries.

"We have now happily concluded the great work of independence, but much remains to be done to reap the fruits of it. Our prospects are not flattering. Every day proves the inefficacy of the present confederation ; yet the common danger being removed, we are receding instead of advancing in a disposition to amend its defects. The road to popularity in each state is, to inspire jealousies of the power of congress ; though nothing can be more apparent than that they have no power, and that for the want of it the resources of the country during the war could not be drawn out, and we at this moment experience all the mischief of a bankrupt and ruined credit. It is to be hoped that when prejudice and folly have run themselves out of breath, we may return to reason and correct our errors."

The preceding narrative develops a policy which evidently sought to curtail the limits and to check the growth of this infant empire. A confirmation of its purposes is to be found in the instructions of Montmorin, the successor of Vergennes, to his legate in the United States. "That it is not advisable for France to give to America all the stability of which she is susceptible: she will acquire a degree of power she will be too well disposed to abuse." It is seen in the continued efforts of her agents to support the impotent confederacy of the states, after every enlightened and every virtuous patriot had condemned it; and may be read in the proclamation to the world by their successors, of the perfidious conduct of the old government of France towards their too confiding ally.

Such a policy, it would seem, could only have been suggested by and founded upon the subservience of leading men in this country, who, prompted by illicit motives, allied themselves to her corrupt and crafty councils.

When the existence and consequences of such a connection are considered, Hamilton's public declaration will not excite surprise:—

"Upon my first going into congress, I discovered symptoms of a party too well disposed to subject the interests of the United States to the management of France. Though I felt, in common with those who had participated in the revolution, a lively sentiment of good-will towards a power whose co-operation, however it was and ought to have been dictated by its own interest, had been extremely useful to us, and had been afforded in a liberal and handsome manner; yet, tenacious of the real independence of our country, and dreading the preponderance of foreign influence as the natural disease of popular government, I was struck with disgust at the appearance, in the very cradle of our republic, of a party actuated by an undue complaisance to a foreign power, and I resolved at once to



resist this bias in our affairs : a resolution which has been the chief cause of the persecution I have endured in the subsequent stages of my political life.

“ Among the fruits of the bias I have mentioned, were the celebrated instructions to our commissioners, for treating of peace with Great Britain ; which, not only as to final measures, but also as to preliminary and intermediate negotiations, placed them in a state of dependence on the French ministry, humiliating to themselves and unsafe for the interests of the country. This was the more exceptionable, as there was cause to suspect, that, in regard to the two cardinal points of the fisheries and the navigation of the Mississippi, the policy of the cabinet of Versailles did not accord with the wishes of the United States.

“ The commissioners, of whom Mr. Adams was one, had the fortitude to break through the fetters which were laid upon them by those instructions ; and there is reason to believe that, by doing it, they both accelerated the peace with Great Britain and improved the terms, while they preserved our faith with France. Yet a serious attempt was made to obtain from congress a formal censure of their conduct. The attempt failed, and instead of censure, the praise was awarded which was justly due to the accomplishment of a treaty advantageous to this country beyond the most sanguine expectation. In this result, my efforts were heartily united.”

## CHAPTER XVIII.

[1783]

THE necessity felt by the friends of the public faith of availing themselves of the army discontents, much as the exercise of such an influence was apprehended, is shown by the proceedings of Massachusetts, at that time the richest state in the confederation, and which had suffered less than any other from the war.

It will be remembered that the half-pay was established in seventeen hundred and eighty, by a congress elected before the articles of the confederation had gone into operation, while they were exercising all the large powers which, in the early exigencies of the country, had been conferred upon them, and which were incidental to the purposes of their election; no question could, therefore, exist as to their right to make this pledge.

The articles of the confederation were adopted on the first March, seventeen hundred and eighty-one. By the twelfth article, all the engagements of the previous congresses were sanctioned as a charge against the United States, "for the payment whereof the public faith was solemnly pledged." Yet, with a knowledge of this pledge, the legislature of Massachusetts, under the influence of the individuals who had been principally instrumental in framing those articles, though they admitted the discretionary power of congress to provide for the support of the army, declared that the principles of equity had not been attended to in the grant of half-pay: "that being, in their opinion, a grant of more than an adequate reward

for their services, and inconsistent with that equality which ought to subsist among citizens of free and republican states; that such a measure appeared to be calculated to raise and exalt some citizens in wealth and grandeur, to the injury and oppression of others."

Such was the language of a state, in reference to an explicit public engagement, to an army which had by that engagement alone been saved from dissolution. This remonstrance of Massachusetts was brought before congress at a later period than that now under consideration. A committee sustained the grant, independent of all considerations of policy, upon the ground that it was a complete and constitutional act; yet such were the jealousies of this assembly, that on the discussion of their report, the declaration of the constitutional power of congress to make it was stricken out; and the delegates of Massachusetts, though some of them were in favour of the measure, yielded so far to the influence of their state, as to decline voting on the final question.\*

Among the resolutions adopted by the army on the fifteenth of March, one expressed their "unshaken confidence in the justice of congress and their country; and stated that they were fully convinced that the representatives of America would not disband or disperse them, until their accounts were liquidated, the balances accurately ascertained, and adequate funds established for their payment."

The terms of this resolution had given great embarrassment. The committee of which Hamilton was chairman, requested him to communicate their difficulties to the commander-in-chief, and to ask his private opinion, which he

\* A formal protest signed by Samuel Adams was presented to congress, in which it is to be remarked, that this provision for the army is assigned as one of the reasons for refusing the impost

thus did.—“The army, by their resolutions, express an expectation that congress will not disband them previous to a settlement of accounts and the establishment of funds. Congress may resolve upon the first, but the general opinion is, that they cannot constitutionally declare the second. They have no right by the confederation to demand funds, they can only recommend ; and to determine that the army shall be continued in service till the states grant them, would be to determine that the whole present army shall be a standing army during peace, unless the states comply with the requisitions for funds. This, it is supposed, would excite the claims and jealousies of the states, and increase rather than lessen the opposition to the funding scheme. It is also observed that the longer the army is kept together, the more the payment of past dues is procrastinated ; the abilities of the states being exhausted for their immediate support, and a new debt every day incurred. It is further suggested, that there is danger in keeping the army together in a state of inactivity, and that a separation of the several lines would facilitate the settlement of accounts, diminish present expense, and avoid the danger of the union. It is added, that the officers of each line, being on the spot, might, by their own solicitations and those of their friends, forward the adoption of funds in the different states. A proposition will be transmitted to you by Colonel Bland, in the form of a resolution to be adopted by congress, framed upon the principles of the foregoing reasoning.

“Another proposition is contained in the following resolution.—‘That the commander-in-chief be informed, it is the intention of congress to effect the settlement of the accounts of the respective lines previous to their reduction, and that congress are doing and will continue to do every thing in their power towards procuring satisfactory securities for what shall be found due on such settlement.’

“The scope of this, your excellency will perceive without comment. I am to request you will favour me with your sentiments on both the propositions, and in general with your ideas of what had best be done with reference to the expectation expressed by the officers, taking into view the situation of congress. On one side, the army expect they will not be disbanded till accounts are settled and funds established; on the other hand, they have no constitutional power of doing any thing more than to recommend funds, and are persuaded that these will meet with mountains of prejudice in some of the states. A considerable progress has been made in a plan for funding the public debt, and it is to be hoped it will ere long go forth to the states with every argument that can give it success.

“Philadelphia, 25th of March, 1783.”

This public letter was enclosed in a private one of the same date, which exhibits his deep sense of the injuries to which the army was exposed, and his indignation and disgust at the imbecile counsels that induced congress to trifle with so solemn an engagement.

“SIR,

“The enclosed I write more in a public than in a private capacity. Here I write as a citizen zealous for the true happiness of this country; as a soldier who feels what is due to an army which has suffered every thing and done much for the safety of America.

“I sincerely wish *ingratitude* was not so natural to the human heart as it is. I sincerely wish there were no seeds of it in those who direct the councils of the United States. But while I urge the army to moderation, and advise your excellency to take the direction of their discontents, and endeavour to confine them within the bounds

of duty, I cannot, as an honest man, conceal from you that I am afraid their distrusts have too much foundation. Republican jealousy has in it a principle of hostility to an army, whatever be their merits, whatever be their claims to the gratitude of the community. It acknowledges their services with unwillingness, and rewards them with reluctance. I see this temper, though smothered with great care, involuntarily breaking out upon too many occasions. I often feel a mortification which it would be impolitic to express, that sets my passions at variance with my reason. Too many, I perceive, if they could do it with safety or colour, would be glad to elude the just pretensions of the army. I hope, however, this is not the prevailing disposition.

“But supposing the country ungrateful, what can the army do? It must submit to its hard fate. To seek redress by its arms, would end in its ruin. The army would moulder by its own weight; and for want of the means of keeping together, the soldiery would abandon their officers. There would be no chance of success *without having recourse to means that would reverse our revolution.*

“I make these observations, not that I imagine your excellency can want motives to continue your influence in the path of moderation, but merely to show why I cannot myself enter into the views of coercion which some gentlemen entertain; for I confess, could force avail, I should almost wish to see it employed. I have an indifferent opinion of the honesty of this country, and ill forebodings of its future system.

“Your excellency will perceive I have written with sensations of chagrin, and will make allowance for colouring, but the general picture is too true. God send us all more wisdom.”

Washington replied on the fourth of April:—

"DEAR SIR,

"The same post which gave me your two letters of the twenty-fifth of March, handed me one from Colonel Bland on the same point.

"Observing that both have been written at the desire of a committee of which you are both members, I have made a very full reply to their subject in my letter which is addressed to Colonel Bland; and supposing it unnecessary to enter into a complete detail to both, I must beg leave to refer you to Colonel Bland's (a sight of which I have desired him to give you) for a full explanation of my ideas and sentiments.

"I read your private letter of the twenty-fifth with pain, and contemplated the picture it had drawn, with astonishment and horror. But I will yet hope for the best. The idea of redress by force, is too chimerical to have had a place in the imagination of any serious mind in this army; but there is no telling what unhappy disturbances may result from distress and distrust of justice: and as the fears and jealousies of the army are alive, I hope no resolution will be come to for disbanding or separating the lines till the accounts are liquidated. You may rely upon it, sir, that unhappy consequences would follow the attempt. The suspicions of the officers are afloat, notwithstanding the resolutions which have passed on both sides; any act, therefore, which can be construed into an attempt to separate them before the accounts are settled, will convey the most unfavourable ideas of the rectitude of congress; whether well or ill-founded matters not, the consequences will be the same.

"I will now, in strict confidence, mention a matter which may be useful for you to be informed of. It is, that some men (and leading ones too) in this army are beginning to entertain suspicions that congress, or some members of it, regardless of the past sufferings and present distress—mau-

gre the justice which is due to them—and the return which a grateful people should make to men who certainly have contributed more than any other class to the establishment of independency, are to be made use of as mere puppets to establish continental funds; and that rather than not succeed in this measure or weaken their ground, they would make a sacrifice of the army and all its interests.

“I have two reasons for mentioning this matter to you. The one is, that the army (considering the irritable state it is in, its sufferings and composition) is a dangerous instrument to play with; the other, that every possible means consistent with their own views (which certainly are moderate) should be essayed to get it disbanded without delay. I might add a third; it is, that the financier is suspected to be at the bottom of this scheme. If sentiments of this sort should become general, their operation will be opposed to this plan, at the same time that it would increase the present discontents. Upon the whole, disband the army as soon as possible, but consult the wishes of it, which really are moderate, in the mode, and perfectly compatible with the honour, dignity, and justice which is due from the country to it. I am, with great regard, dear sir, your most obedient servant.”

Hamilton answered on the eleventh of April:—

“SIR,

“I have received your excellency’s letters of the thirty-first of March and fourth of April, the last to-day. The one to Colonel Bland, as member of the committee, has been read in committee confidentially, and gave great satisfaction. The idea of not attempting to separate the army before the settlement of accounts, corresponds with my proposition; that of endeavouring to let them have some pay, had also appeared to me indispensable. The expect-



tations of the army, as represented by your excellency, are moderation itself. To-morrow we confer with the superintendent of finance on the subject of money. There will be difficulty, but not, we hope, insurmountable. I thank your excellency for the hints you are so obliging as to give me in your private letter. I do not wonder at the suspicions that have been infused; nor should I be surprised to hear that I have been pointed out as one of the persons concerned in playing the game described: but facts must speak for themselves. The gentlemen who were here from the army, General McDougall who is still here, will be able to give a true account of those who have supported the just claims of the army, and of those who have endeavoured to elude them. There are two classes of men, sir, in congress of very different views; one attached to state, the other to continental politics. The last have been strenuous advocates for funding the public debt upon solid securities; the former have given every opposition in their power, and have only been dragged into the measures, which are now near being adopted, by the clamours of the army and other public creditors. The advocates for continental funds have blended the interests of the army with other creditors, from a conviction that no funds for partial purposes will go through those states to whose citizens the United States are largely indebted; or if they should be carried through from impressions of the moment, would have the necessary stability; for the influence of those unprovided for would always militate against a provision for others, in exclusion of them. It is in vain to tell men who have parted with a large part of their property on the public faith, that the services of the army are entitled to a preference. They would reason from their interest and their feelings: these would tell them that they had as great a title as any other class of the community to public justice, and that while

this was denied to them, it would be unreasonable to make them bear their part of a burden for the benefit of others. This is the way they would reason, and as their influence in some of the states was considerable, they would have been able to prevent any partial provision.

‘ But the question was not merely how to do justice to the creditors, but how to restore public credit. Taxation in this country, it was found, could not supply a sixth part of the public necessities. The loans in Europe were far short of the balance, and the prospect every day diminishing: the court of France telling us, in plain terms, she could not even do as much as she had done; individuals in Holland, and every where else, refusing to part with their money on the precarious tenure of the mere faith of this country, without any pledge for the payment either of principal or interest. In this situation, what was to be done? It was essential to our cause that vigorous efforts should be made to restore public credit; it was necessary to combine all the motives to this end, that could operate upon different descriptions of persons in the different states. The necessity and discontents of the army presented themselves as a powerful engine. But, sir, these gentlemen would be puzzled to support their insinuations by a single fact. It was indeed proposed to appropriate the intended impost on trade to the army debt, and, what was extraordinary, by gentlemen who had expressed their dislike to the principle of the fund. I acknowledge I was one that opposed this, for the reasons already assigned and for these additional ones: *that* was the fund on which we most counted to obtain further loans in Europe; it was necessary we should have a fund sufficient to pay the interest of what had been borrowed and what was to be borrowed. The truth was, these people in this instance wanted to play off the army against the funding system.

“As to Mr. Morris, I will give your excellency a true

explanation of his conduct. He had been for some time pressing congress to endeavour to obtain funds, and had found a great backwardness in the business. He found the taxes unproductive in the different states; he found the loans in Europe making a very slow progress; he found himself pressed on all hands for supplies, he found himself, in short, reduced to this alternative—either of making engagements which he could not fulfil, or declaring his resignation in case funds were not established by a given time. Had he followed the first course, the bubble must soon have burst; he must have sacrificed his credit and his character, and *public* credit, already in a ruined condition, would have lost its last support. He wisely judged it better to resign; this might increase the embarrassments of the moment, but the necessity of the case, it was to be hoped, would produce the proper measures, and he might then resume the direction of the machine with advantage and success. He also had some hope that his resignation would prove a stimulus to congress. He was, however, ill advised in the publication of his letters of resignation. This was an imprudent step, and has given a handle to his personal enemies, who, by playing upon the passions of others, have drawn some well-meaning men into the cry against him. But Mr. Morris certainly deserves a great deal from his country. I believe no man in this country but himself could have kept the money machine a going during the period he has been in office. From every thing that appears, his administration has been upright as well as able. The truth is, the old leaven of Deane and Lee is at this day working against Mr. Morris. He happened in that dispute to have been on the side of Deane, and certain men can never forgive him. A man whom I once esteemed, and whom I will rather suppose *duped* than wicked, is the second actor in this business.

“The matter with respect to the army, which has occa-

sioned most altercation in congress, and most dissatisfaction in the army, has been the half-pay. The opinions on this head have been two: one party was for referring the several lines to their states, to make such commutation as they should think proper; the other, for making the commutation by congress, and funding it on continental security. I was of this last opinion, and so were all those who will be represented as having made use of the army as puppets. Our principal reasons were—First, by referring the lines to their respective states, those which were opposed to the half-pay would have taken advantage of the officers' necessities to make the commutation far short of an equivalent. Secondly, the inequality which would have arisen in the different states when the officers came to compare, (as has happened in other cases,) would have been a new source of discontent. Thirdly, such a reference was a continuance of the old wretched state system, by which the ties between congress and the army have been nearly dissolved—by which the resources of the states have been diverted from the common treasury and wasted; a system which your excellency has often justly reprobated.

“I have gone into these details to give you a just idea of the parties in congress. I assure you upon my honour, sir, I have given you a candid statement of facts to the best of my judgment. The men against whom the suspicions you mention must be directed, are in general the most sensible, the most liberal, the most independent, and the most respectable characters in our body, as well as the most unequivocal friends to the army; in a word, they are the men who think continentally.

“I am chairman of a committee for peace arrangements. We shall ask your excellency's opinion at large on a proper military peace establishment.

• We at this moment learn an officer is arrived from

Sir Guy Carleton with despatches ; probably *official* accounts of peace."

From this letter may be seen the delicate and embarrassing position in which Hamilton was placed. Compelled by a high sense of duty, and by his comprehensive views of the public interest, to oppose those feeble and partial measures of finance which he saw must result in failure, he was exposed to all that misrepresentation and malice could suggest as to his motives, and to the injurious suspicion that, from considerations of policy, he would participate in schemes to render the soldiery mere puppets to advance the establishment of permanent funds.

Prompted, on the other hand, by that devotion to the army and care of its interests which his relations to them peculiarly demanded of him, and which his deep distrust of the purposes of congress increased, to use every proper mean to enforce their claims, and almost to sanction a line of conduct which was so necessary, and yet so full of jeopardy, he unjustly incurred the deeper and more dangerous suspicion of being accessory to an excitement which, once aroused, might disregard all control, and involve every interest, civil and military, in one common ruin.

Under these circumstances he followed the dictates of a lofty intellect, and with the fullest confidence in the patriotism of his fellow-soldiers, and with a firm belief that the dangers of military insubordination were exaggerated, he adhered to his determination never to relinquish the demands of public faith, which he pronounced "the cornerstone of public safety." He soon after received the following explanatory letter from Washington.

"Newburgh.

"DEAR SIR,

"My last letter to you was written in a hurry, when I was fatigued by the more public yet confidential letter which

(with several others) accompanied it. Possibly I did not on that occasion express myself, in what I intended as a hint, with so much perspicuity as I ought. Possibly, too, what I then dropped might have conveyed more than I intended, for I do not at this time recollect the force of my expression.

“My meaning, however, was only to inform (you) that there were different sentiments in the army as well as in congress respecting continental and state funds,—some wishing to be thrown upon their respective states, rather than the continent at large, for payment ; and that, if an idea should prevail generally that congress, or part of its members or ministers, bent upon the latter, should *delay* doing them justice, or *hazard* it in pursuit of their favourite object, it might create such divisions in the army as would weaken rather than strengthen the hands of those who were disposed to, support continental measures, and might *tend* to defeat the end they themselves had in view by endeavouring to involve the army. For these reasons I said, or meant to say, the army was a dangerous engine to work with, as it might be made to cut both ways, and, considering the sufferings of it, would more than probably throw its weight into that scale which seemed most likely to preponderate towards its immediate relief, without looking forward (under the pressure of present wants) to future consequences with the eyes of politicians. In this light, also, I meant to apply my observations to Mr. Morris, to whom, or rather to Mr. G. M., is ascribed in a great degree the groundwork of the superstructure which was intended to be raised in the army by the anonymous addresses.

“That no man can be more opposed to state funds and local prejudices than myself, the whole tenor of my conduct has been one continual evidence of. No man, perhaps, has had better opportunities to *see* and to *feel* the pernicious tendency of the latter than I have, and I endeavour (I

hope not altogether ineffectually) to inculcate them upon the officers of the army upon all proper occasions; but their feelings are to be attended to and soothed, and they assured that, if continental funds cannot be established, they will be recommended to their respective states for payment. Justice must be done them. I should do injustice to report, and what I believe to be the opinion of the army, were I not to inform you that they consider you as a friend zealous to serve them, and one who has espoused their interests in congress upon every proper occasion. It is to be wished, as I observed in my letter to Colonel Bland, that congress would send a committee to the army with plenipo. powers. The matters requested of me in your letter of the —, as chairman of a committee, and many other things, might then be brought to a close with more despatch, and in a happier manner, than it is likely they will be by an intercourse of letters at the distance of one hundred and fifty miles, which takes *our* expresses a week at *least* to go and come. At this moment, being without any instructions from congress, I am under great embarrassment with respect to the soldiers for the war, and shall be obliged more than probably, from the necessity of the case, to exercise my own judgment, without waiting for orders as to the discharge of them. If I should adopt measures which events may approve, all will be well; if otherwise, why and by what authority did you do so?

“How far a *strong* recommendation from congress to observe *all* the articles of peace, as well as the . . . .\* may imply a suspicion of good faith in the people of this country, I pretend not to judge; but I am much mistaken if something of the kind will not be found wanting, as I already perceive a disposition to carp at and to elude such parts of the treaty as affect their different interests, although you do

\* The blank exists in the original

not find a man who, when pushed, will not acknowledge that upon the whole it is a more advantageous peace than we could possibly have expected. I am, dear sir, with great esteem and regard,

“G. W.”

The preliminary articles of the treaty with Great Britain were ratified on the fifteenth of April.\* Immediately after this act, on the same day, instructions were given to the agent of marine to discharge the naval prisoners, and Washington was authorized to make the proper arrangements with the commander-in-chief of the British forces for receiving the posts occupied by the British, and for obtaining the delivery of the negroes and other American property in their possession. The secretary of war was also directed, conjointly with the commander-in-chief, to take proper arrangements for liberating the land prisoners.

A motion was made to exclude Washington from any participation in the restoration of the prisoners, but it did not prevail.

Notwithstanding his strenuous exertions to establish the construction, that execution was to date from the ratification of the provisional treaty, in this Hamilton had been defeated. To release the prisoners under such circumstances, was manifestly impolitic. It would strengthen the enemy, and would also deprive the United States of the power of making their restoration an equivalent for the surrender of the posts.

It was important, therefore, to ascertain the construction of the treaty by the British commander. Should he determine to retain the posts, the United States would be justified in retaining the prisoners. With this view, on the

\* 1 Mad. 454, mentions a motion of “Hamilton to insert, in a definitive treaty, a mutual stipulation not to keep a naval force on the lakes”



day of the ratification of the treaty, he addressed the following letter to Washington.

April 15, 1783.

SIR,

There are two resolutions passed relative to the restoration of the British prisoners, and to making arrangements for the surrender of the posts in the possession of the British troops. The first of which is to be transacted by you, in conjunction with the secretary of war; the latter, by yourself alone. I will explain to you some doubts which have arisen in congress with regard to the true construction of the provisional treaty, which may be of use to you in transacting the business above mentioned.

The sixth article declares that there shall be no future confiscations, &c., after the *ratification of the treaty in America*, and the seventh article makes the surrender of prisoners, evacuation of posts, cessation of hostilities, &c., to depend on that event, to wit: *the ratification of the treaty in America*. Now the doubt is, whether the *treaty* means the provisional treaty *already concluded*, or the *definitive treaty to be concluded*. *The last construction is most agreeable to the letter of the provisional articles*;\* the former most agreeable to the usual practice of nations, for hostilities commonly cease on the ratification of the preliminary treaty. There is a great diversity of opinion in congress. It will be in my opinion advisable, at the same time that we do not communicate our doubts to the British, to extract their sense of the matter from them.

This may be done by asking them at what period they are willing to stipulate the surrender of posts, at the same time that they are asked, in what manner it will be most

\* Madison Debates, pp 440, 443, 444. It is difficult to reconcile the representation given in these pages with the above opinion, expressed on the very day of the ratification

convenient to them to receive the prisoners. If they postpone the evacuation of the different posts to the definitive treaty, we shall then be justified in doing the same with respect to prisoners. The question will then arise, whether, on principles of humanity, economy, and liberality, we ought not to restore the prisoners at all events, without delay. Much may be said on both sides. I doubt the expedience of a total restoration of prisoners, till they are willing to fix the epochs at which they will take leave of us. It will add considerably to their strength; and accidents, though improbable, may happen. I confess, however, I am not clear in my opinion. The provisional or preliminary treaty is ratified by us for greater caution

The instructions to the commander-in-chief, of the previous day, were in peremptory terms. With a view to enable him to exercise a discretion as to the execution of the seventh article, dependent on the British construction, Hamilton on the following day proposed to modify these instructions so as to authorize him to enter into preparatory arrangements relative to it; but though a majority of the states were in favour of this proposition, the constitutional number was not obtained.\* He soon after received a letter from Washington which shows their concurrence of opinion.

Newburgh, 22d April, 1783

DEAR SIR,

I did not receive your letter of the fifteenth until after my return from Ringwood, where I had a meeting with the secretary at war, for the purpose of making arrangements for the release of our prisoners, agreeably to the resolve of congress of the fifteenth instant. Finding a diversity of opinion respecting the treaty and the line of conduct we ought

\* Negative 3, affirmative 5, divided 2.

to observe with the prisoners, I requested, in precise terms, to know from General Lincoln, (before I entered on the business,) whether we were to exercise our own judgment with respect to the *time* as well as *mode* of releasing them, or was to be confined to the latter ; being informed that we had no option in the first, congress wishing to be eased of the expense as soon as possible, I acted *solely* on that ground.

At the same time, I scruple not to confess to you, that if this measure was not dictated by necessity, it is, in my opinion, an impolitic one, as we place ourselves in the power of the British before the treaty is definitive. The manner in which peace was first announced, and the subsequent declarations of it, have led the country and army into a belief that it was final. The ratification of the preliminary articles on the third of February so far confirmed this, that one consequence resulting from it is, the soldiers for the war conceive that the term of their services has actually expired ; and I believe it is not in the power of congress or their officers to hold them much, if any longer ; for we are obliged at this moment to increase our guards to prevent rioting, and the insults which the officers meet with in attempting to hold them to their duty. The proportion of these men amounts to seven-elevenths of this army ; these we shall lose at the moment the British army will receive by their prisoners five or six thousand men. It is not for me to investigate the causes which induced this measure, nor the policy of those letters (from authority) which gave the ton to the present sentiment ; but since they have been adopted, we ought, in my opinion, to put a good face upon matters, and by a liberal conduct throughout, on our part, freed from appearances of distrust, try if we cannot excite similar dispositions on theirs. Indeed, circumstanced as things *now* are, I wish most fervently that all the troops which are not retained for a

peace establishment were to be discharged immediately, or such of them at least as do not incline to await the settlement of their accounts. If they continue here, their claims, I can plainly perceive, will increase and our perplexities multiply. A petition is this moment handed to me from the non-commissioned officers of the Connecticut line, soliciting their pay. It is well drawn, I am told, but I did not read it. I sent it back without appearing to understand the contents, because it did not come through the channel of their officers. This may be followed by others; and I mention it to show the necessity, the absolute necessity of discharging the *war's men* as soon as possible.

I have taken much pains to support Mr. Morris's administration in the army; and in proportion to its numbers, I believe he had not more friends any where. But if he will neither adopt the mode which has been suggested, point out any other, nor show cause why the first is impracticable or impolitic, (I have heard he objects to it,) they will certainly attribute their disappointment to a lukewarmness in him, or some design incompatible with their interests. And here, my dear Colonel Hamilton, let me assure you that it would not be more difficult to still the raging billows in a tempestuous gale, than to convince the officers of this army of the justice or policy of paying men in civil offices full wages, when *they* cannot obtain a sixtieth part of their dues. I am not unapprised of the arguments which are made use of upon this occasion to discriminate the cases; but they really are futile, and may be summed up in this—that though both are contending for the same rights and expect equal benefits, yet, both cannot submit to the same inconveniences to obtain them; otherwise, to adopt the language of simplicity and plainness, a ration of salt pork, with or without pease, as the case often is, would support the one as well as the other, and in such a struggle as ours, in my opinion, would be alike honourable in both.

My anxiety to get home increases with the prospect of it ; but when is it to happen ?—I have not heard that congress have yet had under consideration the lands and other gratuities, which at different periods of the war have been promised to the army.

Do not these things evince the necessity of a committee's repairing to camp, in order to arrange and adjust matters, without spending time in a tedious exchange of letters. Unless something of this kind is adopted, business will be delayed and expenses accumulated, or the army will break up in disorder—go home enraged—complaining of injustice, and committing enormities on the innocent inhabitants in every direction.

I write to you unreservedly. If, therefore, contrary to my apprehension, all these matters are in a proper train, and Mr. Morris has devised means to give the army three months' pay, you will, I am persuaded, excuse my precipitancy and solicitude, by ascribing it to an earnest wish to see the war happily and honourably terminated—to my anxious desire of enjoying some repose—and the necessity of my paying a little attention to my private concerns, which have suffered considerably in eight years' absence.

McHenry expressing—in a letter I have lately received from him—a wish to be appointed official secretary to the court of Versailles or London, I have by this opportunity written to Mr. Livingston and Mr. Maddison, speaking of him in warm terms, and wish him success with all my heart.

The day after this letter was written, congress declared that the time of the men engaged to serve during the war, did not expire until the ratification of the definitive treaty.

As chairman of the committee for peace arrangements, the duty devolved upon Hamilton of directing the immediate discharge of the naval prisoners, the detention of

whom was not prompted by the policy which would have retained those of the army. In a letter to the superintendent of finance, who was also the agent of marine, respecting these prisoners, he suggested to him the formation of a plan for a national marine, in pursuance of the opinions expressed in "The Continentalist," that, as "a commercial people, maritime power must be a primary object of our attention, and that a Navy cannot be created or maintained without ample resources." Referring also to the mint which had been authorized during the preceding year, he again adverted to the establishment of a NATIONAL COINAGE.

The various topics which engaged his attention, while they called forth all the powers, show the fulness and elasticity of his mind. His public avocations did not occupy all his attention; many of his intervals of leisure were devoted to the general study of finance. Having previously perused the earlier writers, he now entered upon a deliberate examination of the political economy of Adam Smith, and wrote, while a member of congress, an extended commentary upon his "Wealth of Nations," which is not preserved.\*

It has been perceived that the debate on the revenue system was interrupted by the discussion of the claims of the army, the general principle, the necessity of permanent and adequate funds, having been adopted. This subject was resumed, and, on the motion of Madison, a proposition was made reasserting this principle, but omitting the provision contained in Hamilton's resolution, that these funds should be "*collected by congress*"† This fatal concession to state prejudices, wholly at war with Hamilton's opinions and with a national policy, was followed by

\* Related by P. S. Duponceau, a distinguished civilian of Philadelphia.

† Madison Debates, vol 1, p 289.

another only less hostile to the object in view, the establishment of a basis for loans. It was the limitation of the duration of the revenue act to a period of twenty-five years.

Hamilton strenuously opposed both these concessions, insisting that the principles of the address to Rhode Island, which the house had sanctioned, ought not to be departed from. The duration of the act, he asserted, ought to be co-extensive with the existence of the debt, and the collection as well as the appropriation should be under the control of the United States. In these views he was sustained by Bland of Virginia; but Madison concurring with Lee and Mercer, the vote of that state was given in favour of a limited term.\*

\* Madison Papers, vol. 1, 342—Madison states a motion by Hamilton, seconded by Bland, to postpone the clause limiting its duration to 25 years, “in order to substitute a proposition declaring it to be inexpedient to limit the period of its duration, first, because it ought to be commensurate to the duration of the debt, secondly, because it was improper in the present state of the business, and all the limitation of which it would admit, had been defined in the resolutions of the 16th of Dec 1782. Hamilton said, in support of his motion, that it was in vain to attempt to gain the concurrence of the states by removing the objections publicly assigned by them against the impost, that the true objection on the part of Rhode Island was the interference of the impost with the opportunity afforded by their situation of levying contributions on Connecticut, &c., which received foreign supplies through the ports of Rhode Island; that the true objection on the part of Virginia, was her having little share in the debts due from the United States, to which the impost would be applied, that a removal of the avowed objections would not, therefore, remove the obstructions; whilst it would admit, on the part of congress, that their first recommendation went beyond the absolute exigencies of the public; that congress, having taken a proper ground at first, ought to maintain it till time should convince the states of the propriety of the measure.

“Mr Bland said, that as the debt had been contracted by congress with the concurrence of the states, and congress was looked to for payment by the public creditors, it was justifiable and requisite in them to pursue such means as would be adequate to the discharge of the debt, and that the means would not be adequate, if limited in duration to a period within which no calculations had shown that the debt would be discharged.”—The eyes

Small as the motive was to proceed in the completion of the system, Hamilton still hoped that before the final vote was taken, congress would return to the only principles on which an effective public credit could be established. He then submitted to the committee a list of "objects for taxation." In addition to the impost, he proposed a graduated house tax, a land tax, and various specific taxes.

In this plan the objects of taxation were so chosen, as to throw the public burdens chiefly upon luxuries. They were the same, excluding a few, with those which were embraced in the first revenue system under the present government.

In the proposed house tax, he was governed by a consideration to which he attached great weight—the discontinuance of the arbitrary system of assessments. "Do we imagine," he had remarked in the *Continentalist*, "that our assessments operate equally? Nothing can be more contrary to the fact. Wherever a discretionary power is lodged in any set of men over the property of their neighbours, they will abuse it. Their passions, prejudices, partialities, dislikes, will have the principal lead in measuring the abilities of those over whom their power extends; and assessors will ever be a set of petty tyrants, too unskilful, if honest, to be possessed of so delicate a trust, and too seldom honest to give them the excuse of want of skill. The genius of liberty reprobates every thing arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands. Whatever liberty we may boast in theory, it cannot exist in fact, while assessments continue. The admission of them among us, is a

were—Rhode Island, New-York, New-Jersey, Pennsylvania, North Carolina, and South Carolina. Noes—Massachusetts, *Virginia*, (Colonel Bland, aye,) Connecticut, and New-Hampshire, divided



new proof how often human conduct reconciles the most glaring opposites ; in the present case, the most vicious practice of despotic governments with the freest constitutions and the greatest love of liberty."

While the discussion was proceeding, the superintendent of finance addressed a letter to congress, stating "that the revenue should be co-existent with the debt ; that if granted for a fixed period of time, no more money could be borrowed on it than the price of an annuity for such a time, and the more clear, certain, permanent, and increasing the fund should be, the lower would be the rate of interest." He objected to the proposed impost, on the ground that an advalorem estimation is arbitrary, and suggested that a tax might be laid upon exports, "which, without being burdensome, would still be productive." He concurred in the objections which Hamilton had made as to the estimate of land as a measure of contribution—pointed out its unavoidable inequality—proposed, as a mode of terminating all existing accounts, that the whole sum paid or expended by each state for the public service should be placed to the credit of such state, and that each should draw interest on such sum ; and in lieu of the five per cent. impost would have substituted a tariff. This letter was referred ; but its views did not prevail, and on the eighteenth of March a report was made to the house. Fearing that the proposed revenues would prove inadequate to their object, a proposition was offered by Wilson, which was seconded by Hamilton, for a small tax on all located and surveyed lands ; but it was rejected, four states voting in favour of it.

The report invited the states to confer on congress the power of levying for the use of the United States specific duties on certain enumerated imports, and a duty of five per cent. advalorem upon all other goods, excepting arms, ammunition, and clothing, or articles imported for the use

of the United States, giving a *bounty* to the exporters of a few articles of American production.\* It provided that the duties should be applied only to the discharge of the interest or principal of the debts contracted for the support of the war, and to be continued *twenty-five years*. The collectors to be *appointed by the states*, but removable by, and amenable to, congress alone; and that if no appointment should be made by a state within a limited time, that then the appointment should be made by congress.

It recommended also supplementary funds of such a nature "as the states" may respectively *judge most convenient*, to be levied for a term of twenty-five years; to be carried to the separate credit of the states within which they shall be collected; to be liquidated and adjusted among the states according to the *quotas* allotted to them, accounting annually to each for the proceeds and application of these funds. It promised equitable allowances to the states according to their peculiar circumstances, in pursuance of, though partly deviating from, Hamilton's motion of the fourth of March, then rejected. It proposed to *ASSUME*, with a view to a *more amicable, complete* adjustment of all accounts between the United States and individual states, all *reasonable* expenses incurred by the states *without* the sanction of congress, in their defence against or attacks upon British or savage enemies either by sea or land, and which shall be supported by satisfactory proofs, and declared that they "shall be considered as part of the common charges incident to the present war, and to be allowed as such."† And it suggested an amendment to the articles of the confederation, so that all public charges and expenses should be defrayed out of a common treasury to be sup-

\* Fish, beef, and pork

† This part of the report is founded on a resolution of Madison, the original of which exists in the state department, No 26, "Report of Committee on Finance,"

plied by the states in proportion to the number of *inhabitants of every age, sex, and condition*, excepting *Indians not paying taxes* in each state, according to the laws of each state, except those of certain ages The enumeration to be made by a triennial census

These resolutions, when acceded to by every state, were to form a compact irrevocable without the concurrence of all the states, or by a majority of states in congress. Having contended in the committee with earnest perseverance against the leading principles of this report—against the limited term of the grant, the nomination and appointment of the collectors of the revenue by the states, and the entire omission of a land tax—Hamilton brought forward a report, which embraced provisions to meet his objections,\* and which contained another important fea-

\* March 20th, 1783.—“Whereas congress did, on the 12th day of February last, resolve, that it is the opinion of congress that the establishment of adequate and permanent funds, in taxes or duties which shall operate generally and on the whole in just proportions throughout the United States, are indispensably necessary towards doing complete justice to the public creditors; for restoring public credit, and for providing for the future exigencies of the war. And whereas it is the duty of congress, on whose faith the public debts have been contracted for the common safety, to make every effort in their power for the effectual attainment of objects so essential to the honour and welfare of the United States, relying on the wisdom and justice of their constituents for a compliance with their recommendations:

“Therefore, resolved, That it be earnestly recommended to the several states without delay to pass laws for the establishment of the following funds, to be *vested* in the United States, and to be collected and appropriated by *their authority*, provided that the officers for the collection of the said funds shall be inhabitants of each state respectively in which they reside, and *being nominated by congress*, shall be approved and appointed by such state, accountable to, and removable by, congress; and provided, that if after any nomination being reported to the state, the same is not opposed or rejected at the next meeting of the legislature, the person or persons so nominated shall be deemed to be duly appointed, viz:—A duty of five per cent. advalorem, at the time and place of importation, upon all goods, wares, and merchandises, of foreign growth and manufacture, which may be imported

ture, that had been suggested to congress in seventeen hundred and eighty—the exemption from taxation of wool cards, cotton cards, and the wire for making them; thus

into any of the said states from any foreign port, island, or plantation, except arms, ammunition, clothing, and other articles imported on account of the United States, or any of them, and except wool cards, cotton cards, and wire for making them; and also, except the articles hereinafter enumerated, the duty on which shall be regulated according to the specified rates hereto annexed” \* \* \* \* \* Here the duties specified in the report were inserted. “Also a duty of five per cent. advalorem on all prizes and prize goods condemned in any court of admiralty of this state as lawful prize. A land tax,\* at the rate of ——— ninetieths of a dollar for every one hundred acres of located and surveyed land. A house tax, at the general rate of half a dollar for each dwelling-house, (cottages excepted,) and at the additional rate of two and a half per cent on whatever sum the rent of said house may exceed twenty dollars, to be calculated on the actual rent, when the house is rented; and when in the occupancy of the owner, on an appraised rent by commissioners under oath appointed by the state periodically. The lot and the appurtenances, in town, and in the country, the out-houses, garden, and orchard, to be comprehended with the dwelling-house. The duties on imports to pass to the general benefit of the United States without credit for the proceeds to any particular states; but the product of the land and house taxes to be credited to each state in which they shall arise. Said funds to *continue till the principal of the debt due by the United States at the termination of the present war shall be finally discharged*

“That an estimate be transmitted to each state of the amount of the public debt, as far as the same can be ascertained, and that congress will invariably adhere to their resolutions of the 16th day of December last, respecting the appropriation of the funds which may be granted, and the annual transmission of the state of the public debt, and the proceeds and disposition of the said funds, by which all doubts and apprehensions respecting the *perpetuity* of the public debt may be effectually removed”

These resolutions were not to take effect until acceded to by every state,

\* Madison Papers, v 1, p 300—Madison states that “he suggested, as practicable objects of a general revenue—first, an impost on trade, secondly a poll tax under certain qualifications, thirdly, a land tax, under ditto. Mr Hamilton suggested a house and *window tax*”

It has been seen, ante, vol. 1 p 370 that Hamilton had proposed, in 1781, a land and poll tax, and that the superintendent of finance had also suggested the same taxes.—D. C. vol 12, p 226. That Hamilton suggested “a house and *window tax*,” is an error. His list of “objects of taxation” mentions dwelling-houses, rated according to the number of rooms, with an addition for each room painted, or papered, or having a marble chimney-piece, or a stucco roof—or rated according to the number of hearths—or to the *number of windows* exceeding three,—different measures of value

looking to the protection of domestic industry, of which, with such surprising sagacity, he foretold the advantages in his youthful essays.

Having introduced these propositions, which he saw would result, if adopted, in an essential invigoration of the confederacy, he moved a postponement of the report of the committee, in order to bring forward his own views; but, though sustained by the votes of Connecticut, New-York, New-Jersey, and Pennsylvania, he was defeated by those of Massachusetts, Rhode Island, Maryland, Virginia, and of both the Carolinas.\*

The discussion of the original report was resumed on the ensuing day, when a proposition was offered to complete that part for raising a revenue by imposts; but it was rejected, some of the members being unwilling to complete it without embracing the supplemental funds. A motion was then made to strike out the land valuation as the rule of contribution, which would necessarily be much deferred, and, as proposed to be made by the states, might be indefinitely postponed, and to substitute the population. The articles of confederation, as first reported, fixed as the measure of taxation the number of the inhabitants of the states, exclusive of Indians not taxed, which it was also proposed to establish as the measure of representation; a proposition sustained only by the vote of Virginia. The states in which slavery was not tolerated insisted that freemen alone ought to have a political voice; the slave-

when they were to form a *mutual compact*, irrevocable by any one state without the concurrence of the whole, or of a majority of the states in congress.

\* 4 J C 177—The votes of Massachusetts, Virginia, and South Carolina, were not unanimous. Holten, of the first state, voted for Hamilton's motion, Gorham, Higginson, and Osgood, against it. Col. Bland, of Virginia, was for it; Lee, Madison, and Mercer, against it. Rutledge, of South Carolina, was for it; Gervais and Izard, against it.

holding states, that representation ought to be apportioned to taxation; that if slaves were computed in the enumeration of the inhabitants in apportioning the public burdens, they ought also to be counted in adjusting the scale of representatives.

In this competition for power the eastern states prevailed, and the land valuation, objectionable as it was known to be, was adopted as the only alternative to escape this perplexing question. The difficulty of making such a valuation indicated a resort to some other expedient, and the idea was suggested of a compound vote of freemen and slaves as the basis of federal numbers. At first it was proposed that *one-half* of the number of slaves should be embraced; which being objected to by the south, two-thirds were proposed; for which number New-Hampshire, Connecticut, New-York, New-Jersey, Pennsylvania, and Delaware, were in the affirmative, Rhode Island divided, and Maryland, Virginia, North and South Carolina, in the negative.

The committee then agreed to report\* as the ratio of contribution, that the whole number of free inhabitants, and three-fifths of all other inhabitants of every sex and condition, except Indians not paying taxes in each state, should be computed. This proposal failed. New-Hampshire, New-Jersey, Pennsylvania, Maryland, Virginia, and North Carolina, being in favour of it; Massachusetts, Rhode Island, Connecticut, Delaware, and South Carolina, opposed to it. Owing to Hamilton's absence, the vote of New-York was lost. On the first of April, he moved a reconsideration of this question, and offered an amendment, by which the apportionment of the expenses was to be in proportion to the whole number of *white* and other free inhabitants of every age, sex, and condition, *including*

*those bound to servitude for a term of years*, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes in each state ; to be comprehended in a triennial census, and transmitted to congress. This motion prevailed by a vote of all the states, excepting Massachusetts and Rhode Island. Thus the important principle so long debated, as to the rule of contribution to all charges for the common defence and general welfare, was recommended as a part of the federal system.

This great obstacle being at last removed, after considering a report of Hamilton for the reduction of the expenses of the war department, and also the measures which have been adverted to as to the execution of the treaty, congress proceeded steadfastly to the adjustment of a revenue system ; the enumerated articles, except the duty on salt, being retained.

On the eighteenth of April, the details having been completed, an amendment was proposed which recommended to the states that had not ceded their unappropriated lands to the United States, to make such cessions ; and to those which had complied in part only with the resolutions of congress, "to revise and complete that compliance." This amendment was adopted, and the act being approved by the vote of all except four members, it was referred to Madison, Ellsworth, and Hamilton, to prepare an explanatory address.

On the twenty-fifth the draft of a report was introduced, giving an estimate of the national debt,\* accompanied with Hamilton's address to Rhode Island, with a computation of

* The foreign debt was computed to amount to \$ 7,885,085	
Domestic . . . . .	34,115,290
Total . . . . .	42,000,000
Annual interest at stipulated rates, . . . .	2,415,956

the yearly product of the impost, a view of the foreign loans, and with the papers relating to the discontents of the army. On the following day this report was agreed to. It apologized for the departure from "the strict maxims of national credit," which required that "the revenue ought manifestly to be coexistent with the object of it," and the collection placed in every respect under that authority which was responsible for its application. It also stated the necessity of supplemental funds, and urged the importance of the proposed change in the mode of estimating the ratio of contribution by the states. The address closed with an exhortation to the states to fulfil their engagements, and reproved, in marked terms, the idea of a discrimination between the original holders of the debt and purchasers. It was from the pen of Madison. On the final question as to the revenue system, Hamilton, with Higginson and the members from Rhode Island, voted in the negative. He deemed it important to give an explanation to the state of New-York of his course on this subject, and of the reasons of his opposition. With this view he wrote the following letter.

#### HAMILTON TO GOVERNOR CLINTON.

Philadelphia, May 14, 1783

The president of congress will of course have transmitted to your excellency the plan lately adopted by congress for funding the public debt. This plan was framed to accommodate it to the objections of some of the states; but this spirit of accommodation will only serve to render it less efficient, without making it more palatable. The opposition of the state of Rhode Island, for instance, is chiefly founded upon these two considerations: the merchants are opposed to any revenue from trade; and the state, depend



ing almost wholly on commerce, wants to have credit for the amount of the duties.

Persuaded that the plan now proposed will have little more chance of success than a better one, and that if agreed to by all the states it will in a great measure fail in the execution, it received my negative.

My principal objections were—First, that it does not designate the funds (except the impost) on which the whole interest is to arise; and by which (selecting the capital articles of visible property) the collection would have been easy, the funds productive, and necessarily increasing with the increase of the country. Secondly, that the duration of the funds is not coextensive with the debt, but limited to twenty-five years, though there is a moral certainty that in that period the principal will not, by the present provision, be fairly extinguished. Thirdly, that the nomination and appointment of the collectors of the revenue are to reside in each state, instead of, at least, the nomination being in the United States; the consequence of which will be, that those states which have little interest in the funds, by having a small share of the public debt due to their own citizens, will take care to appoint such persons as are the least likely to collect the revenue.

The evils resulting from these defects will be, that in many instances the objects of the revenue will be improperly chosen, and will consist of a multitude of little articles, which will, on experiment, prove insufficient; that, for want of a vigorous collection in each state, the revenue will be unproductive in many, and will fall chiefly on those states which are governed by most liberal principles; that for want of an adequate security, the evidences of the public debt will not be transferable for any thing like their value. That this not admitting an incorporation of the creditors in the nature of banks, will deprive the public of

the benefit of an increased circulation, and of course will disable the people from paying the taxes for want of a sufficient medium. I shall be happy to be mistaken in my apprehensions, but the experiment must determine.

I hope our state will consent to the plan proposed ; because it is her interest, at all events, to promote the payment of the public debt in continental funds, independent of the general considerations of union and propriety. I am much mistaken if the debts due from the United States to the citizens of the state of New-York do not considerably exceed its proportion of the necessary funds ; of course it has an immediate interest that there should be a continental provision for them. But there are superior motives that ought to operate in every state—the obligations of national faith, honour, and reputation.

Individuals have been too long already sacrificed to the public convenience. It will be shocking, and, indeed, an eternal reproach to this country, if we begin the peaceable enjoyment of our independence by a violation of all the principles of honesty and true policy.

It is worthy of remark, that at least four-fifths of the domestic debt are due to the citizens of the states from Pennsylvania inclusively northward.

P. S.—It is particularly interesting that the state should have a representation here. Not only many matters are depending which require a full representation in congress, and there is now a thin one, but those matters are of a nature so particularly interesting to our state that we ought not to be without a voice in them. I wish two other gentlemen of the delegation may appear as soon as possible, for it would be very injurious to me to remain much longer. Having no future views in public life, I owe it to myself without delay to enter upon the care of my private concerns in earnest.

It is difficult, looking merely at the force of the reasoning in favour of his views, to comprehend, at this time, how any hesitation could have existed as to the system to be preferred.

The objections to that proposed by congress are so obvious, and the consequences of attempting to carry it into effect were so certain, that it cannot be matter of surprise that Hamilton regarded it as an attempt which would, "in a great measure, fail in the execution." But notwithstanding, true to those principles of action which governed his whole career, it is to be remarked in this letter how entirely his mind rose above all sense of defeat, and with what unreserved and earnest interest he urged the adoption of a measure, not such as he desired, but as the best which, after every exertion to amend it, that could be obtained.

It has been mentioned that the superintendent of finance had intimated to congress his intention to resign. In the disposition which then existed to cast reproach upon that most valuable officer, this purpose had been misrepresented, and attempts were made to induce the belief that his sole object was to embarrass the operations of government.

On the passage of the revenue bill, a committee, of which Hamilton was a member, was appointed to confer with him. After a full exposition of the motives which had influenced him, which were, "the continued refusal of congress to make an effectual provision for the public debts," and from which he saw that his administration would probably end in disgrace, and with the complete overthrow of the national credit and ruin of his private fortune, he consented to retain his place. That body then passed a resolution "that the *public service required* his continuance in office until the reduction of the army, and the completion of the financial arrangements connected with it."

It has been perceived that at an early stage of the discussions as to revenue, Hamilton had sought to open the doors of congress. As peace had not yet been concluded, his proposal at that time was of a limited nature. The termination of hostilities no longer afforded a reason for secret proceedings, while the course of the recent discussions the more convinced him of the great importance of their deliberations being public. To effect this, a resolution was offered,\* which he seconded, declaring that open debate should be the rule of the house, and secrecy the exception. This proposed change was founded on a declaration "of the importance, in every free country, that the conduct and sentiments of those to whom the direction of public affairs is committed, should be publicly known." A motion to postpone this question—connected with an assurance that when congress should have a fixed place of residence, uninfluenced by any particular state, that then this principle should be adopted—was rejected, and the main proposition was negatived by a large majority.† Immediately after the passage of the revenue act, Hamilton devoted his attention to his duties as chairman of the military committee. On the first of May he submitted a report for the reduction of the corps of invalids. It provided full pay for life to all seriously disabled officers; directing the establishment of an hospital for all the non-commissioned officers and soldiers who were proper subjects for it, to be supported for life, granting to them in the mean time their rations and clothing, and entitling them to participate in any other beneficiary provisions which might be made for the army. Hitherto the army had only received an assurance of present pay. The financier was without funds, and no early revenue from taxes was to be anticipated. The

\* By James Wilson.

† The affirmatives were, Bland, Fitzsummons, Gorham, Hamilton, Wilson.

only resources were a compliance with the late requisition and a loan. On the second of May, Hamilton brought forward a resolution on these subjects.

It recited "the indispensable necessity of making the army, when reduced, an advance of pay before they leave the field; and as there are many other engagements for which the public faith is pledged, that the states be called upon, in the most solemn manner, to make every effort for the collection of taxes; and that congress confidently rely, for an immediate and efficacious attention to the present requisition, upon the disposition of their constituents, not only to do justice to those brave men who have suffered and sacrificed so much in the cause of their country, and whose distresses must be extreme, should they be sent from the field without a payment of a part of their well-earned dues; but also to enable congress to maintain the faith and reputation of the United States, both which are seriously concerned in relieving the necessities of a meritorious army and fulfilling the public stipulations. That the superintendent of finance be directed to make the necessary arrangements for carrying the views of congress into execution; and that he be assured of their firm support towards fulfilling the engagements he has already taken or may take on the public account during his continuance in office; and that a further application should be made to the king of France for an additional loan of three millions of livres."

Anxious that no effort should be omitted for the fulfilment of the pledges given by congress to apportion to the troops specific quantities of land, he prepared a resolution "that a committee should be appointed to consider of the best manner of carrying into execution the engagements of the United States for certain allowances of land to the army at the conclusion of the war." This subject was referred to a grand committee, by which, after frequent

deliberations, a report framed by Hamilton was adopted, which declared that until the lands should be located and surveyed, that certificates should be given to the officers and soldiers as evidences of their claims, and also to the representatives of those who had fallen in the service. The apprehensions which Washington had expressed of the excited feelings of the army were strongly participated in by congress, and a resolution was offered to discharge that part of it which had been enlisted during the war.

Hamilton's failure to establish\* the immediate execution of the provisional articles, induced him to propose a cautionary substitute. The commander-in-chief was instructed to grant furloughs to the soldiers enlisted for the war, with an assurance of their discharge on the conclusion of the definitive treaty, and that measures would be taken that they should be conducted to their homes in a manner most convenient to themselves, and to the states through which they may pass, and should "be allowed to take their arms with them;"† a deserved tribute, which had been suggested in the camp.

The dissatisfaction of the troops was a subject of constant solicitude to Washington. He addressed congress on the subject. Hamilton moved that a copy of his letter should be transmitted to the states, and that they should be urged to facilitate the punctual payment of the notes issued to the army. So constant and pressing were the calls of congress, and such the remissness of the states.

Hamilton now directed his attention to the removal of all obstacles to the execution of the treaty, and to measures for the security of the frontiers.

In reference to the first object, he proposed a remonstrance‡ to the British government as to the deportation of the negroes, asking reparation for the injury. While

\* May 28.

† 4 J. C. 224

‡ May 30.

demanding of England the fulfilment of her engagements, he was the more anxious to provide against any infractions by the United States; and with this view he introduced a report, which was followed by an important resolution. This resolution required the removal of all obstructions by the states to the recovery of debts; the restitution of all confiscated property on receiving an equivalent; and the discontinuance of all confiscations, as due "to that spirit of moderation and liberality which ought ever to characterize the deliberations and measures of a free and enlightened nation." Previous mention has been made of the different views of other leading individuals. They are strongly shown in the report of Madison to the preceding congress, on the terms of a treaty with England.

The violence already displayed by the citizens of New-York towards the tories, and the unwise legislation of that state, probably induced Hamilton's early attention to this subject. On a division of the house, he alone voted\* against the commitment of the report, so urgent was his sense of the policy and duty of fulfilling the provisional articles. Immediately after this vote, resolutions of Virginia of the seventeenth December previous, directing the commissioners at Paris "neither to agree to any restitution of property confiscated by the state, nor to submit that the laws made by any independent state of this union be subjected to the adjudication of any power or powers on earth," were considered. These resolutions, if regarded, would have prevented the conclusion of that article of the preliminary treaty, which provided against any lawful impediment being interposed to the creditors on either side recovering the full value, in sterling money, of all bona fide debts contracted before the war. Congress resolved† that this stipulation

\* 1 Mad 456 — Madison says, "the report being finally committed *non con.*" but see 4 J. C. p 225, and 3 S. J p 358

† May 30.

could not be retracted "without a violation of the national faith, and that the honour and interest of these United States require it should be substantially complied with" At the instance of Pennsylvania, a resolution was passed on the same day instructing the negotiators to endeavour to amend the treaty so as to defer any execution for debts contracted previous to the war for a period of three years, and declaring their opinion that demands for interest accruing during the war would be highly inequitable and unjust.

Apprehensive lest the acts which had already taken place might prevent the conclusion of the definitive treaty, after the interval of a day Hamilton wrote to Clinton recapitulating the general arguments in favour of clemency, and enforcing them by a view of the peculiar and strong interests of the state he represented

#### HAMILTON TO GOVERNOR CLINTON

Philadelphia, June 1, 1783

SIR,

In my last letter to your excellency, I took occasion to mention that it was of great importance to the state, at this time, to have a representation here, as points in which, by its present situation, it is particularly interested, are daily and will be daily agitated. It is also of importance at this moment to the United States, not only from general considerations, but because we have a very thin representation in congress, and are frequently unable to transact any of those matters which require nine states. I wish your excellency would urge two gentlemen to come on, as it becomes highly inconvenient to me to remain here, and as I have staid the full time to be expected.

I observe with great regret the intemperate proceedings among the people in different parts of the state; in violation of a treaty, the faithful observance of which so



deeply interests the people of the United States. Surely, the state of New-York, with its capital and its frontier posts (on which its important fur trade depends) in the hands of the British troops, ought to take care that nothing is done to furnish a pretext on the other side, even for delaying, much less for resisting the execution of the treaty. We may imagine that the situation of Great Britain puts her under the necessity, at all events, of fulfilling her engagements, and cultivating the good-will of this country. This is, no doubt, her true policy; but when we feel that passions make us depart from the true dictates of reason—when we have seen that passion has had so much influence in the conduct of the British in the whole course of the war—when we recollect that those who govern them are men like ourselves, and alike subject to passions and resentments—when we reflect, also, that all the great men in England are not united in the liberal scheme of policy with respect to this country, and that in the anarchy which prevails, there is no knowing to whom the reins of government may be committed—when we recollect how little in a condition we are to enforce a compliance with our claims—we ought certainly to be cautious in what manner we act, especially when we in particular have so much at stake, and should not openly provoke a breach of faith on the other side by setting the example.

An important distinction is not sufficiently attended to. The fifth article is recommendatory; the sixth positive,—there is no option on the part of the particular states, as to any future confiscations, persecutions, or injuries of any kind, to person, liberty, or property, on account of any thing done in the war. It is matter of discretion in the states, whether they will comply with the recommendations contained in the fifth article; but no part of the sixth can be departed from by them, without a direct breach of public faith and of the confederation. The power

of making treaties, is exclusively lodged in congress. That power includes whatever is essential to the termination of the war and to the preservation of the general safety. Indemnity to individuals in similar cases, is an *usual* stipulation in treaties of peace, of which many precedents are to be produced.

Should it be said that the associations of the people without legal authority do not amount to a breach of the public faith; the answer is, if the government does not redress them, and prevent their having this effect, it is as much a breach as a formal refusal to comply on its part. In the eye of a foreign nation, if our engagements are broken, it is of no moment whether it is for the want of good intention in the government or for want of power to restrain its subjects. Suppose a violence committed by an American vessel on the vessel of another nation upon the high seas; and, after complaint made, there is no redress given, is not this an hostility against the injured nation, which will justify reprisals?

But, if I am not misinformed, there are violations going on in form of law. I am told that indictments continue to be brought under the former confiscation laws, in palpable infraction, if true, of the sixth article of the treaty; to which an immediate stop ought, no doubt, to be put.

It has been said by some men that the operation of this treaty is suspended till the definitive treaty: a plain subterfuge.\* Whatever is clearly expressed in the provisional or preliminary treaty, is as binding from the moment it is made as the definitive treaty, which in fact only de-

\* Madison Papers, vol. 1, p 444 Yet Madison says, "Mr Hamilton acknowledged that he began to view the *obligation* of the provisional treaty in a different light, and in consequence, wished to vary the direction of the commander-in-chief from a positive to a preparatory one, as his motion on the Journal states."—The real motive to that proposed variance has been sufficiently shown

velops, explains, and fixes more precisely what may have been too generally expressed in the former. Suppose the British should now send away not only the negroes, but all other property, and all the public records in their possession belonging to us, on the pretence above stated; should we not justly accuse them with breaking faith? Is not this already done in the case of the negroes who have been carried away, though founded upon a very different principle, a doubtful construction of the treaty, not a denial of its immediate operation. In fine, is it our interest to advance this doctrine, and to countenance the position, that nothing is binding till the definitive treaty, when there are examples of years intervening between preliminary and definitive treaties?

Sir Guy Carleton in his correspondence has appeared to consider the treaty as immediately obligatory, and it has been the policy which I have preferred, to promote the same idea. I am not indeed apprehensive of a renewal of the war, for peace is necessary to Great Britain; I think it also most probable her disposition to conciliate this country will outweigh the resentments which a breach of our engagements is calculated to inspire. But with a treaty which has exceeded the hopes of the most sanguine, which in the articles of boundary and of the fisheries is even better than we asked, circumstanced as this country is with respect to the means of making war, I think it the height of imprudence to run any risk. Great Britain, without recommencing hostilities, may evade parts of the treaty. She may keep possession of the frontier posts. She may obstruct the free enjoyment of the fisheries. She may be indisposed to such extensive concessions in matters of commerce as it is our interest to aim at. In all this she would find no opposition from any foreign power, and we are not in a condition to oblige her to any thing.

If we imagine that France, obviously embarrassed her-

self in her finances, would renew the war to oblige Great Britain to the restoration of our frontier posts, or to compliance with the stipulations respecting the fisheries (especially after a manifest breach of the treaty on our part,) we speculate much at random. Observations might be made on the last article which would prove that it is not the policy of France to support our interests there.

Are we prepared, for the mere gratification of our sentiments, to put these great national objects at hazard—to leave our western frontier in a state of insecurity—to relinquish the fur trade, and to abridge our pretensions to the fisheries?

Do we think national character so light a thing, as to be willing to sacrifice the public faith to individual animosity? Let the case be fairly stated. Great Britain and America, two independent nations at war—the former in possession of considerable posts and districts of territory belonging to the latter, and also of the means of obstructing certain commercial advantages in which it is deeply interested.

It is not uncommon in treaties of peace for the *uti possidetis* to take place. Great Britain, however, in the present instance stipulates to restore all our posts or territory in her possession. She even adds an extent not within our original limits, more than a compensation for a small part ceded in another quarter. She agrees to readmit us to a participation in the fisheries. What equivalent do we give for this? Congress are to recommend the restoration of property to those who have adhered to her, and expressly engage that no future injury shall be done them in person, liberty, or property.

This is the sole condition on our part where there is not an immediate reciprocity, (the recovery of debts and liberation of prisoners being mutual;) the former indeed is only declaring what the rights of private faith, which all civil-

ized nations hold sacred, would have dictated without it, and stands as the single equivalent for all the restitutions and concessions to be made by Great Britain. Will it be honest in us to violate this condition, or will it be prudent to put it in competition with all the important matters to be performed on the other side? Will foreign nations be willing to undertake any thing with us or for us, when they find that the nature of our government will allow no dependance to be placed upon our engagements?

I have omitted saying any thing of the impolicy of inducing, by our severity, a great number of useful citizens, whose situations do not make them a proper object of resentment, to abandon the country, to form settlements that will hereafter become our rivals, animated with a hatred to us which will descend to their posterity. Nothing, however, can be more unwise than to contribute, as we are doing, to people the shores and wilderness of Nova Scotia, a colony, which, by its position, will become a competitor with us, among other things, in that branch of commerce on which our navigation and navy will essentially depend—I mean the fisheries, in which I have no doubt the state of New York will hereafter have a considerable share.

. To your excellency I freely deliver my sentiments, because I am persuaded you cannot be a stranger to the force of these considerations. I fear not even to hazard them to the justice and good sense of those I have the honour to represent. I esteem it my duty to do it, because the question is important to the interests of the state, in its relation to the United States.

Those who consult only their passions, might choose to construe what I say as too favourable to a set of men who have been the enemies of the public liberty; but those for whose esteem I am most concerned, will acquit me of any personal considerations, and will perceive that I only urge the cause of national honour, safety, and advantage. We

have assumed an independent station, we ought to feel and to act in a manner consistent with the dignity of that station.

I anxiously wish to see every prudent measure taken to prevent those combinations which will certainly disgrace us, if they do not involve us in other calamities. Whatever distinctions are judged necessary to be made in the cases of those persons who have been in opposition to the common cause, let them be made by legal authority, on a fair construction of the treaty, consistent with national faith and national honour.

P. S.—Your excellency will have been informed that congress have instructed General Washington to garrison the frontier posts, when surrendered, with the three years continental troops. This is more for the interest of the state than to have them garrisoned at its particular expense ; and I should wish that permanent provision might be made on the same principles. I wait to see whether any continental peace establishment for garrisons will take place, before I engage the consent of congress to a separate provision. I cannot forbear adding a word on the subject of money. The only reliance we now have for redeeming a large anticipation on the public credit, already made and making for the benefit of the army, is on the taxes coming in. The collection hitherto is out of all proportion to the demand. It is of vast consequence at this juncture that every thing possible should be done to forward it. I forbear entering into details which would be very striking on this subject. I will only say, that unless there is a serious exertion in the states, public credit must ere long receive another shock, very disagreeable in its consequences, &c."

It has been observed that the territorial controversy be-

tween New-York and the people of Vermont had remained, at the commencement of this congress, unadjusted. Congress had never acted with decision on this subject. New-England, with the exception of New-Hampshire, was in favour of the disaffected party. Some of its leading men denied the right of congress to interfere; most doubted the expediency. The four states south of New-York also favoured their pretensions. She was only sustained by the southern states—jealous of the east—unwilling to admit into the union another small state to enjoy equal political weight, and to have a voice in respect to their western claims. But New-York entertained no doubt of her rights, and looked with extreme jealousy on any interference with them. Several individuals who acknowledged their allegiance to her had been banished by Vermont, and their estates confiscated. This procedure was brought before congress on the fifth of December, by a resolution seconded by Hamilton, declaring it to be “highly derogatory to the authority of the United States, and dangerous to the confederacy;” requiring restitution of the confiscated property, and pledging themselves to enforce it. After several proposed modifications, it passed. The only object of this resolution was to prevent hostile collisions until the question of jurisdiction should be settled, or at least until the termination of the war. But the enforcement of it would be extremely difficult in a country of mountains and defiles, by troops, most of whom were from the eastern states, and all averse to such a conflict. When Hamilton proposed this resolution, he had recently taken his seat in congress, and was unformed of the diversity of the views entertained by its members on this subject. As soon as he ascertained the true position of the question, he wrote to Clinton suggesting a compromise. The governor replied that the prevailing opinion of the state was, that a partial compromise would be improper, as congress had en-

gaged to make a final decision of the controversy. He thought, however, that if the summit of the mountains should be designated by them as the boundary, New-York would submit to it "for the sake of peace."

Hamilton again adverted to this subject :—

"A few days since I was honoured with your excellency's letter of the ———, and was glad to find your ideas on the subject corresponded with mine. As I shall in a day or two take leave of Congress, I think it my duty to give my opinion to the legislature in a matter of importance to the state, which has been long depending, and is still without a prospect of termination, in the train in which it has been placed. I mean the affair of the grants. It is hazardous to pass a positive judgment on what will happen in a body so mutable as that of congress ; but from all I have seen, I have come to a settled opinion, that no determination will be taken and executed by them in any other manner than in that prescribed by the confederation. There is always such a diversity of views and interests, so many compromises to be made between different states, that in a question of this nature, the embarrassments of which have been increased by the steps that have preceded, and in which the passions of the opposite sides have taken a warm part, decision must be the result of necessity. While congress have a discretion, they will procrastinate ; when they are bound by the constitution, they must proceed.

"It is therefore my opinion that it will be advisable for the legislature, when they meet, to revive the question, and either to relinquish their pretensions to the country in dispute, or to instruct their delegates, if a decision is not had within a limited time, to declare the submission to congress revoked, and to institute a claim according to the principles of the confederation. It would be out of my province to discuss which side of the alternative ought, in



policy, to prevail; but I will take the liberty to observe, that if the last should be preferred, it would be expedient to remove every motive of opposition from private claims, not only by confirming in their full latitude, previous to the trial, the possessions of the original settlers, but even the grants of the usurped government. It may happen that it will be eventually necessary to employ force; and in this case, it would be of great importance that neither the inhabitants of the grants, nor powerful individuals in other states, should find their private interest in contradiction to that of the state. This has already had great influence in counteracting our wishes, would continue to throw impediments in the way of ulterior measures, and might at last kindle a serious flame between the states.

“I communicated to your excellency in a former letter, that I had declined pressing the application of the legislature to congress respecting the state troops for garrisoning the frontier posts, because temporary provision had been made in another way, which would save the state the immediate expense; and because there was a prospect of some general provision for the defence of the frontiers, on a continental establishment, which was to be preferred on every account. A report for this purpose is now before congress, but the thinness of the representation has for some time retarded, and still retards its consideration. The definitive treaty has not yet arrived, but from accounts which, though not official, appear to deserve credit, it may daily be expected. A gentleman known and confided in has arrived at Philadelphia, who informs that he saw a letter from Dr. Franklin to Mr. Barkely, telling him that the definitive treaties were signed the seventh of May, between all the parties; that New York was to be evacuated in six months from the ratification of the preliminaries in Europe, which will be the twelfth or fifteenth of next month.

“As it is not my intention to return to congress, I take this opportunity to make my respectful acknowledgments to the legislature, for the honourable mark of confidence conferred upon me by having chosen me to represent the state in that body. I shall be happy if my conduct has been agreeable to them.”

During the various progressive steps towards the establishment of a national revenue, and the adjustment of the claims of the army, Colonel Hamilton's attention had also been directed to other matters of permanent interest.

Soon after his appointment as chairman of the military committee, he took into view a branch of the service, which, from the amount of the expenditure, its connection with the comforts of the army, and its previous inefficiency, was a subject of prominent importance—the Quartermaster-general's Department.

The difficulties attendant upon a proper establishment for the military supplies, have been frequently adverted to. While a member of the committee of co-operation, General Schuyler had, after urging General Greene to continue at the head of this department, strenuously pressed the adoption of a plan framed by Hamilton, stating in a letter to congress, “that the business should be prosecuted in the most spirited manner, and upon the largest estimate.” This plan was not adopted; frequent modifications of the system were made, the last on the twenty-eighth October, seventeen hundred and eighty-two. This drew from the quartermaster-general a letter, setting forth the necessity of a change.

Hamilton framed a new organization, gave to the quartermaster-general the appointment of all the officers belonging to this department, designated them, defined their compensation, specified the means of transportation to be allotted to each rank in the army, and their respective

forage and subsistence, providing checks upon the issues.

In consequence of a letter from the president of the state of Pennsylvania respecting a peace with the Indians, he framed a report in which—after reciting that by the ninth article of the confederation the sole and exclusive right and power of regulating the trade and managing all the affairs with the Indians, not members of any of the states, was in the United States—it was declared that the superintendence of Indian affairs should be annexed to the department of war. That there should be an immediate suspension of hostilities with them, and that four agents, one for each of four districts, embracing the eastern, northern, southern, and western Indians, should be appointed to negotiate treaties. Lest the exercise of this power should be interpreted into a waiver of any rights, a proviso was added that the preceding measures of congress shall not be construed to affect the territorial claims of any of the states, or their legislative rights, within their respective limits.\*

He also, as chairman of the committee on peace arrangements, sensible of the great importance of arranging the executive departments, drew a report in relation to the department of foreign affairs.†

It provided that the secretary of that department should be considered as the head of the diplomatic corps. To remove any doubts which may have existed as to the nature of the office, it was declared to be his duty to lay before congress such plans for conducting the political and commercial intercourse of the United States with foreign nations, as might appear to him conducive to their interest. He was to be entitled to the same salary and allowances as were provided for a minister at a foreign court, and to

\* April 21

† May 8

have an official secretary to be nominated by himself, to receive the same compensation as a secretary of an embassy. The compensation of each minister was also specified. He was to be invested with consular powers, and to be at the same time consul-general in the country where he resided ; having the control of all vice-consuls or inferior commercial agents, but not to be at liberty to engage directly or indirectly in any traffic. Vice-consuls were to be appointed without salaries, but with permission to trade.

The secretary of foreign affairs, in order to carry this plan into effect, was directed to prepare and lay before congress an ordinance for regulating the consular powers and privileges, and a plan of a convention to be entered into with foreign powers for that purpose.

A proposition was also at this time introduced\* which has a grateful aspect amid the serious responsibilities incident to war

During the previous year, General Schuyler offered a resolution in the legislature of New-York to secure copyrights to authors and publishers. A recommendation was now made to the states to secure this right for fourteen years, renewable for a similar term.

Hamilton had, at an early period, expressed the opinion, that in "the existing constitution an army was essential to the American union." It was not less important as a security against foreign aggression, than as a necessary mean of preserving domestic tranquillity.

It has been seen that he had invited Washington to communicate his views as to a peace establishment. A reply was received from him, containing a memorial and suggestions from different officers of the general staff, and reminding congress of the necessity of occupying the posts

\* By Dr. H. Williamson.

the moment they were evacuated. In his late letter to the governor of New-York, Hamilton had informed him that a report of a plan for a continental peace establishment was then before them. The draft of this report, in his hand, exists among his papers. It was prefaced by the following important observations.

“Before any plan with propriety can be determined for a military peace establishment, it is necessary to ascertain what powers exist for that purpose in the confederation.

“First—By the fourth clause of the sixth article it is declared, that no vessels of war shall be kept up by any state, in time of peace, except such number only as shall be deemed necessary by the United States, in congress assembled, for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States, in congress assembled, shall be deemed requisite to garrison the posts necessary for the defence of such state.

“Secondly—By the fifth clause of the ninth article, the United States, in congress assembled, are empowered generally (and without mention of peace or war) to build and equip a navy, to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in each state, which requisition shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States, in congress assembled.

“Thirdly—By the fourth clause of the same article, the United States are empowered to appoint all officers of the land forces in the service of the United States, excepting

regimental officers, to appoint all officers of the naval forces, and to commission all officers whatever in the service of the United States, making rules for the government and regulation of the said land and naval forces, and directing their operations.

“It appears to the committee that the terms of the first clause are rather restrictive on the particular states, than directory to the United States; intended to prevent any state from keeping up forces, land or naval, without the approbation and sanction of the union, which might endanger its tranquillity and harmony, and not to contravene the positive power vested in the United States by the subsequent clauses, or to deprive them of the right of taking such precautions as should appear to them essential to the general security. A distinction that this is to be provided for in time of war by the forces of the union, in time of peace by those of each state, would involve, beside other inconveniences, this capital one—that when the forces of the union should become necessary to defend its rights, and repel any attacks upon them, the United States would be obliged to *begin to create*, at the very moment they would have occasion to *employ*, a fleet and army. They must wait for an actual commencement of hostilities before they would be authorized to prepare for defence, to equip a single regiment, or to build a single ship.

“When it is considered what a length of time is requisite to levy and form an army, and still more to build and equip a navy, which is evidently a work of leisure and of peace, requiring a gradual preparation of the means, there cannot be presumed so improvident an intention in the confederation, as that of obliging the United States to suspend all provision for the common defence until a declaration of war, or an invasion. If this is admitted, it will follow that they are at liberty to make such establishments in time of peace as they shall judge requisite to the common safety.

“This is a principle of so much importance in the apprehension of the committee to the welfare of the union, that if any doubt should exist as to the true meaning of the first mentioned clause, it will, in their opinion, be proper to admit such a construction as will leave the general power vested in the United States by the other clauses in full force, unless the states respectively or a majority of them shall declare a different interpretation.

“The committee, however, submit to congress (in conformity to that spirit of candour, and to that respect for the sense of their constituents which ought ever to characterize their proceedings,) the propriety of transmitting the plan which they may adopt to the several states, to afford an opportunity of signifying their sentiments previous to the final execution.

“The committee are of opinion, if there is a constitutional power in the United States for that purpose, that there are conclusive reasons in favour of foederal in preference to state establishments. First, there are objects for which separate provision cannot conveniently be made; posts within certain districts, the jurisdiction and property of which are not yet constitutionally ascertained—territory appertaining to the United States not within the original claim of any of the states—the navigation of the Mississippi, and of the lakes—the rights of the fisheries, and of foreign commerce; all which, belonging to the United States, depending on the laws of nations and on treaty, demand the joint protection of the union, and cannot with propriety be trusted to separate establishments.

“Secondly—The fortifications proper to be established ought to be constructed with relation to each other, on a general and well-digested system, and their defence should be calculated on the same principles. This is equally important in the double view of safety and economy. If this is not done under the direction of the United States,

each state following a partial and disjointed plan, it will be found that the posts will have no mutual dependence or support ; that they will be improperly distributed, and more numerous than is necessary, as well as less efficacious, of course more easily reduced, and more extensive both in the construction and defence.

“Thirdly—It happens that, from local circumstances, particular states, if left to take care of themselves, would be in possession of the chief part of the standing forces, and of the principal fortified places of the union, a circumstance inconvenient to them and to the United States : to them, because it would impose a heavy exclusive burden, in a matter the benefit of which will be immediately shared by their neighbours, and ultimately by the states at large ; to the United States, because it confides the care of the safety of the *whole* to a *part*, which will naturally be unwilling as well as unable to make such effectual provision, at its particular expense, as the common welfare requires ; because a single state, from the peculiarity of its situation, will in a manner keep the keys of the United States ; because, in fine, a considerable force in the hands of a few states may have an unfriendly aspect, in the confidence and harmony which ought carefully to be maintained between the whole.

“Fourthly—It is probable that a provision by the United States of the forces necessary to be kept up will be made upon a more systematic and economical plan, than a provision by the states separately ; especially as it will be of importance, as soon as the situation of affairs will permit, to establish foundries, manufactories of arms, powder, &c., by means of which, the labour of part of the troops applied to this purpose will furnish the United States with those essential articles on easy terms, and contribute to their own support.

“Fifthly—There must be a corps of artillery and engi-



neers kept on foot in time of peace, as the officers of this corps require science and long preliminary study, and cannot be formed on an emergency, and as the neglect of this institution would always oblige the United States to have recourse to foreigners, in time of war, for a supply of officers in this essential branch; an inconvenience which it ought to be the object of every nation to avoid. Nor indeed is it possible to dispense with the services of such a corps in time of peace, as it will be indispensable not only to have posts on the frontier, but to have fortified harbours for the reception and protection of the fleet of the United States. This corps requiring particular institutions for the instruction and formation of the officers, cannot exist upon separate establishments without a great increase of expense.

“Sixthly—It appears from the annexed papers, No. 1 to 4, to be the concurrent opinion of the committee in council, the secretary at war, the inspector-general, and the chief engineer, not only that some military establishment is indispensable, but that it ought in all respects to be under the authority of the United States, as well for military as political reasons. The plan hereafter submitted, on considerations of economy is less extensive than proposed by either of them.”

This report contemplated a Peace establishment of four regiments of infantry, and one of artillery, with two additional battalions to be incorporated in a corps of engineers, and a regiment of dragoons. Its details will be the subject of future observation.

As the articles of confederation required the regimental officers to be appointed by the states, it proposed that they should transfer this right to congress, and also that the men should be enlisted under continental direction, “as a more certain and a more frugal mode.” The promotions to be made regimentally to the rank of colonel according to sen-

iority ; with an interesting provision, " that no officer of any corps shall consider it as a violation of his rights, if any other, who has been fortunate enough to have an opportunity of distinguishing himself in a particular manner, receives an extra promotion in the corps on account of brilliant services or peculiar talents." A general survey is suggested preparatory to the adoption of a general system of land fortifications.

Maritime fortifications, though pronounced " of the highest importance," could not be immediately undertaken ; but an agent of marine is recommended, to obtain all the lights and prepare all the means previously requisite to the establishment of ports, and the formation of a navy to be constructed and equipped on a plan deliberately combined in all its parts. The establishment of arsenals, and magazines of such articles as are not of a perishable nature, equal to the complete equipment of thirty thousand men for the field, or for a siege calculated on a three years' supply, was also suggested ; and Springfield in Massachusetts, West Point, a convenient position on James river, and Camden in South Carolina, were proposed as the places of deposit.

The institution of military academies was thought premature, and a substitute was given in the plan of the engineer corps. Hamilton advised that a plan for the erection of manufactories of arms and foundries should be prepared by the secretary at war, to be made a serious object of policy as soon as the situation of public affairs would permit. A complete general staff during peace he thought unnecessary, and proposed that the staff should consist of a general officer to command the troops, another to command the corps of engineers and artillery, and an inspector-general. In time of war, two regiments to form a brigade, with a brigadier to each

The details of a general hospital for the reception of the

invalids of the army and navy are given ; and as the existence of a corps of cavalry was deemed of great importance to the southern states, it proposed that the commissioned officers should be appointed. The total annual expense of this establishment was estimated at three hundred and forty thousand dollars ; from which deducting the product of the manufactories in which the artillerists and artificers were to be employed, the charge against the United States would not exceed two hundred and forty-seven thousand dollars. If this were thought too large an expense, a mode was indicated for its further reduction ; and as the officers to be retained would be taken from the existing army, their half-pay would constitute another diminution of the public charge. Such a provision for the common defence was deemed necessary, and the only question was stated to be, whether it should be borne by the United States or by the particular states ; in which last case, it would probably be increased for want of general system.

This report also embraced the outline of a plan for classing and disciplining the militia, whose organization was pronounced a constitutional duty.

With a view to a more perfect system, a military board was proposed to be formed to revise the regulations and digest a general ordinance for the service of the troops of the United States, and another for the service of the militia ; who, as intended to be constituted, would have formed an efficient arm of defence.

A plan involving such important considerations would arouse in the state party vehement opposition.

The exhausted resources of the country would be urged as an objection, the dangers of a standing army insisted on, and the constitutional power denied. These objections, where the motives to a peace establishment were so cogent, would naturally call forth a vigorous defence on the part of Hamilton.

The preamble of the report gives the outline of his constitutional argument. Its policy would be defended by a reference to the great national and common interests of the confederacy, which could only be protected by its united exertions directed by one will. The alarm of danger from a standing army would be met by an appeal to the recent experience of the country and to the lessons of history.

A fragment of notes for the concluding observations of Hamilton's speech on this occasion exists. He stated that it was "an absurdity that congress are empowered to build and equip a navy, and yet, in time of peace, the states are to keep up one in their own defence. There must be a navy formed in time of peace; it ought to be proportioned to our defence, and will then be in all the hands instead of those of certain states.—Congress, constituted as they are, cannot have time for usurpation; usurpation in such an extensive empire, requires long previous preparation, &c — People seldom reform with moderation — Men accustomed to read of usurpations suddenly effected in small cities, look upon such a thing as the work of a day.—The weak side of democracies, is danger of foreign corruption. No individual has sufficient interest in the state to be proof against the seduction.—The want of an army lost the liberty of Athens."

The legislature of New-York, alive to the importance of garrisoning the western posts immediately upon their evacuation, passed a vote in the month of March, requesting their delegates in congress to obtain a resolution in conformity to the sixth article of the confederation, declaring the number of troops they should deem necessary for that purpose, stating the opinion of the legislature that a body not exceeding five hundred men would be adequate to that object, and their wish that the force should consist of New-York state troops who had been enlisted, and

were in the pay of congress, but whom they desired that the United States should declare thenceforth to be considered in the service of the state, and not in the pay or service of the United States; requesting munitions and provisions to be furnished by congress, but to be eventually charged separately to the state.

The letter from General Washington suggesting the propriety of occupying these posts with a portion of the troops of the United States, had been\* referred to a committee, of which Colonel Hamilton, Madison, Osgood, Ellsworth, and Wilson, were members.

Hamilton submitted a report to congress, directing the commander-in-chief, whenever the frontier posts should be evacuated, to place therein of the troops under his command enlisted for three years such force as he might judge necessary to hold and secure them, until further measures should be adopted for their security, for a term not to exceed nine months.

The consideration of this report, which was commenced on the eighth of May, was postponed by the state of Virginia until the twelfth, when it was adopted. Ten states voted in the affirmative, Bland, Lee, and Mercer, the members from Virginia, being against it.

The course which Hamilton took upon this question, gave rise to much dissatisfaction in the minds of a portion of his constituents. The views of Clinton, the governor of New-York, were widely different, and the proceedings of the legislature of that state were in accordance with those views.

Soon after Hamilton had retired from congress, Clinton addressed a general letter to the delegates in that body. Among other observations, he remarked in this letter, "I would take this opportunity also of calling your attention

\* May 3, 1783

to concurrent resolutions of the legislature respecting the garrisoning of the western posts in this state, which, by the provisional treaty, are to be evacuated by the British. These resolutions were in the tenor of instructions to our delegates, and were immediately transmitted to them; but as I have not been favoured with any official information of the result, I submit it to you, whether some report on a subject so interesting to the state may not be necessary for the satisfaction of the legislature. From informal communications made to me by the commander-in-chief, I have reason to believe that he has directions from congress for garrisoning those posts with continental troops, and that he is making arrangements for that purpose. But as you will observe that it was the sense of the legislature that those posts should have been garrisoned by the state, an explanation of the subject becomes the more necessary; and it is now for this reason alone, I would request that you would be pleased to favour me with a particular detail of the motives which influenced the determination of congress on this occasion. For it will readily be perceived, that should congress at this late day accede to the propositions made by the state, it might be impracticable to carry them into execution; especially as I have not ventured, in the state of uncertainty in which I was left, to incur the expense which the necessary preparations for the purpose would have required."

Hamilton, seeing the advantage which was sought to be derived by the state party from the jealousies on this subject, replied at large:—

"I have lately received from Messrs. Duane and L'Houmedieu an extract of a letter from your excellency to the delegates, of the twenty-third of August last, requesting a particular detail of the motives which influenced the determination of congress respecting the application of the legis-

lature to have their state troops released from continental pay, for the purpose of garrisoning the frontier posts.

“In my letters to your excellency of the first of June and twenty-seventh of July, which were intended to be official, I summarily informed you that congress had made temporary provision for garrisoning the frontier posts, and that a plan was under deliberation relative to a peace establishment, which would of course embrace that object permanently ; that, such temporary provision being made at the common expense, and a general plan being under consideration for the future, I had declined pressing a compliance with the application of the legislature, conceiving it to be more for the interest of the state that the expense should be jointly borne, than that it should fall exclusively upon itself.

“I did not enter into a more full detail upon the subject, because the business continued, to the time I left congress, in an undecided state, and it was impossible to judge what views would finally prevail. The concurrent resolutions of the two houses had been, immediately on their receipt, referred to a committee appointed to report on a peace establishment, who had suspended their report on these resolutions till it should appear what would be the fate of a general plan which had been submitted.

“As to the motives that influenced congress in making the provision they did make, rather than immediately assenting to the application of the state, as far as I was able to collect them, they were these :—The opinions of many were unsettled as to the most eligible mode of providing for the security of the frontiers consistent with the constitution, as well with respect to the general policy of the union, as to considerations of justice to those states whose frontiers were more immediately exposed. A considerable part of the house appeared to think, from reasons of a very cogent nature, that the well-being of the Union required a

fœderal provision for the security of the different parts, and that it would be a great hardship to individual states, peculiarly circumstanced, to throw the whole burden of expense upon them, by recurring to separate provisions in a matter, the benefit of which would be immediately shared by their neighbours, and ultimately by the union at large ; that indeed it was not probable particular states would be either able, or, *upon experiment*, willing, to make competent provision at their separate expense ; and that the principle might eventually excite jealousies between the states, unfriendly to the common tranquillity.

“I freely confess I was one who held this opinion. Questions naturally arose as to the true construction of the articles of confederation upon this head ; questions as delicate as interesting, and as difficult of solution. On one hand, it was doubted whether congress were authorized by the confederation to proceed upon the idea of a fœderal provision ; on the other, it was perceived that such a contrary construction would be dangerous to the union, including, among other inconveniences, this consequence—that the United States, in congress, cannot raise a single regiment, or equip a single ship, for the general defence, till after a declaration of war, or an actual commencement of hostilities.

“In this dilemma on an important constitutional question, and other urgent matters depending before congress, and the advanced season requiring a determination upon the mode of securing the western posts, in case of a surrender this fall, all sides of the house concurred in making a temporary provision in the manner which has been communicated.

“My apprehension of the views of the legislature was simply this, that, looking forward to a surrender of the posts, and conceiving, from some expressions in the articles of confederation, that separate provision was to be



made for the frontier garrisons, they had thought it expedient to apply the troops already on foot to that purpose, and to propose to congress to give their sanction to it. Under this apprehension—reflecting, besides, that those troops were engaged only for a short period, upon a very improper establishment to continue, on account of the enormous pay to the private men, and that the expense which is now shared by all, and which would have fallen solely upon the state, had the application been complied with, would probably be at the rate of nearly eighty thousand dollars per annum, a considerable sum for the state in its present situation—I acknowledge to your excellency that I saw with pleasure, rather than regret, the turn which the affair took. I shall be sorry, however, if it has contravened the intentions of the legislature.

“I will take the liberty to add, upon this occasion, that it has always appeared to me of great importance, to this state in particular, as well as to the union in general, that federal, rather than state, provision should be made for the defence of every part of the confederacy, in peace as well as in war. Without entering into arguments of general policy, it will be sufficient to observe, that this state is in all respects *critically situated*. Its relative position, shape, and intersections, viewed on the map, strongly speak this language—‘Strengthen the confederation; give it exclusively the power of the sword; let each state have no forces but its militia.’

“As a question of mere economy, the following considerations deserve great weight.

“The North River facilitates attacks by sea and by land; and, besides the frontier forts, all military men are of opinion that a strong post should be maintained at West Point, or some other position on the lower part of the river. If Canada is well governed, it may become well peopled, and by inhabitants attached to its government. The British

nation, while it preserves the idea of retaining possession of that country, may be expected to keep on foot there a large force. The position of that force, either for defence or offence, will necessarily be such as will afford a prompt and easy access to us. Our precautions for defence must be proportioned to their means of annoying us ; and we may hereafter find it indispensable to increase our frontier garrisons. The present charge of a competent force in that quarter, thrown additionally into the scale of those contributions which we must make to the payment of the public debt, and to other objects of general expense, if the union lasts, would, I fear, enlarge our burden beyond our ability ; that charge hereafter increased, as it may be, would be oppressively felt by the people. It includes not only the expense of paying and subsisting the necessary number of troops, but of keeping the fortifications in repair, probably of erecting others, and of furnishing the requisite supplies of military stores. I say nothing of the Indian nations, because, though it will be always prudent to be upon our guard against them, yet I am of opinion we may diminish the necessity of it by making them our friends, and I take it for granted there cannot be a serious doubt any where as to the obvious policy of endeavouring to do it. Their friendship alone can keep our frontiers in peace. It is essential to the improvement of the fur trade, an object of immense importance to the state. The attempt at the total expulsion of so desultory a people, is as chimerical as it would be pernicious. War with them is as expensive as it is destructive. It has not a single object ; for the acquisition of their lands is not to be wished till those now vacant are filled, and the surest as well as the most just and humane way of removing them, is by extending our settlements to their neighbourhood. Indeed, it is not impossible they may be already willing to exchange their former possessions for others more remote.

“The foregoing considerations would lose all force, if we had full security that the rest of the world would make our safety and prosperity the first object of their reverence and care; but an expectation of this kind would be too much against the ordinary course of human affairs—too visionary, to be a rule of national conduct.

“It is true, our situation secures us from conquest, if internal dissensions do not open the way; but when nations now make war upon each other, the object seldom is total conquest. Partial acquisitions, the jealousy of power, the rivalry of dominion or of commerce, sometimes national emulation and antipathy, are the motives. Nothing shelters us from the operation of either of these causes; the fisheries, the fur trade, the navigation of the lakes and of the Mississippi, the western territory, the islands in the West-Indies with reference to traffic, in short, the passions of human nature, are abundant sources of contention and hostility.

“I will not trespass further on your excellency’s patience; I expected, indeed, that my last letter would have finished my official communications; but Messrs. Duane and L’Hommedieu having transmitted the extract of your letter to Mr. Floyd and myself, in order that we might comply with what your excellency thought would be expected by the legislature, it became my duty to give this explanation. Mr. Floyd having been at congress but a short time after the concurrent resolutions arrived, and being now at a great distance from me, occasions a separate communication.”

While congress was engaged in the consideration of questions connected with the disposal of the western lands, and more particularly of the claims Virginia had interposed, against which Hamilton contended, asserting the rights of the United States, and which called forth a warm

address from the legislature of New-Jersey, urging them not to accept her cession, but to press upon that state "a more liberal surrender of that territory of which they claim so boundless a proportion," their deliberations were suddenly suspended. An occurrence took place, which, though unattended with any immediate consequences of moment, had at first an alarming aspect, and was one of the many circumstances that hastened the degradation of the confederacy. The necessities which had compelled congress to disband the army without fulfilling their engagements, led to this event. The patriotic soldiery who had won the independence of their country, submitted to the severe sacrifices to which they were subjected, with a patience and forbearance of which no similar instance exists. Instead of alarming the country, and invading the security of society by outrages and plunder, a picture was presented by them of the highest interest. They were seen quietly retiring to their respective states, forgetting the habits which war usually forms, mingling with the mass of the community in their common occupations, and only distinguishable from them by the recital of the exploits they had performed, and of the sufferings they had endured; by those scars which a sense of ingratitude and wounded pride would sometimes prompt them to display, and by a deeper and more fervent devotion to their country.

A different temper was exhibited by the new levies, who, without having shared the dangers of the war, demanded an exact fulfilment of the public engagements.

There were in the barracks of Philadelphia and at Lancaster a number of new recruits who had never taken the field, and who refused to accept their discharges without immediate pay. On the fifteenth of June, a petition signed by their sergeants, was presented to congress. It was couched in very peremptory language, but was disregarded. On the eighteenth, letters were received announcing the

determination of another party to march to Philadelphia to demand justice. They reached it on the following day, and joined the men in the barracks.

Rumours were now circulated among the timid citizens of an alarming character. The executive of the state and congress were besieged with entreaties to check the rising spirit of sedition, and to protect them from rapine.

On the first communication of their purpose, Hamilton was appointed chairman of a committee to confer with the government of Pennsylvania, and to endeavour to induce it to call upon the militia to stop the insurgents, but he was unsuccessful. They next despatched the assistant secretary at war to meet them, and to represent with coolness, but with energy, the character of their proceedings and the dangers they had incurred. The mutineers remained passive until the twenty-first of the month, when, upon an intimation that they had cast off the authority of their officers and had a design against the bank, congress was convened.

The state-house, in which they met, and where the executive of Pennsylvania was then sitting, was surrounded by three hundred soldiers armed with bayonets, under the command of seven sergeants, who sent in a message to congress, that "unless their demand was complied with in twenty minutes, they would let in upon them the injured soldiery, the consequences of which, they were to abide." Congress ordered General St. Clair to appear before them; and after having received a statement from him, determined that they would enter into no deliberation with the mutineers, that they must return to Lancaster, and that *there*, and only *there*, they would be paid.

St Clair was directed to endeavour to march them to their barracks. During this interval the federal legislature adjourned, and passed through the files of the mutineers without opposition, though individual members had been previously threatened by them.

The insurgents had taken possession of the powder house, and of some of the public arsenals, with several field-pieces. Congress met in the evening, and again adjourned, having passed resolutions that they had been grossly insulted, directing their committee to confer with the executive of the state, and if there was no sufficient ground for expecting adequate and prompt exertions for supporting the dignity of the federal government, that they should be convened at Philadelphia at a future day.

Hamilton, as chairman of the committee, then waited upon the executive of Pennsylvania, and represented that the proceeding was so serious as to render palliatives improper, and to require a resort to vigorous measures to compel them to submission, and urged the employment of the militia. To this communication the executive council replied that they must first ascertain the disposition of the militia. On the following day the committee asked of the executive a definitive reply in *writing*. The council declined giving a written answer, but stated verbally that while they regretted the occurrence, no aid could be expected from the militia except in case of personal violence, expressing doubts as to the policy of vigorous measures. The committee replied that the measures of congress indicated their opinion; that the mutineers had passed the bounds within which a spirit of compromise was consistent with the dignity and safety of the government; that impunity for what had happened might lead to more flagrant proceedings, invite others to follow the example and extend the mischief, and that they had directed the commander-in-chief to march a detachment to suppress the mutiny.

The committee finding that there were no satisfactory grounds to expect prompt and adequate exertions from the executive of Pennsylvania, felt themselves bound to advise the removal of congress. Anxious to maintain the dignity

of that body, and willing to protract their departure as long as they were justified in the hope that the council might adopt vigorous measures, they deferred it until the twenty-fourth, when seeing no hope of aid from the council, and having every reason to expect new and more extravagant demands from the mutineers, they advised an adjournment to Princeton. The day after their arrival there, on the motion of Hamilton a resolution was passed directing General Howe to march an adequate force to Philadelphia to disarm the mutineers, and bring their leaders to trial. These measures were adopted; but after obedience was secured, congress granted a pardon. These proceedings, deeply offensive as they were to that body, were more particularly so to Hamilton, who had been its instrument in endeavouring to preserve its dignity.

The executive of Pennsylvania perceiving the indignation which its irresolution had excited, transmitted a message to the assembly of the state giving a statement of its proceedings.

Immediately after this publication, incensed at what he deemed a premeditated attempt to mislead public opinion, Hamilton addressed them a highly interesting letter defending the coercive measures he had advised, discussing with great force the obligations of government to sustain their authority under similar circumstances, and making a thorough investigation on general principles of the means proper for quelling a mutiny.

His views from the commencement being, "that the mutiny ought not to be terminated by negotiation; that congress were justifiable in leaving a place where they did not receive the support which they had a right to expect; but as their removal was a measure of a critical and delicate nature, might have an ill appearance in Europe, and might, from events, be susceptible of an unfavourable interpretation in this country, it was prudent to delay until its

necessity became apparent,—not only till it was manifest there would be no change in the spirit which seemed to actuate the council of Pennsylvania, but till it was evident complete submission was not to be expected from the troops; that to give full time for this, it was proper to delay the departure of congress till the latest period.”

Though he considered the delay of this advice as at their extreme peril, yet, as to himself, he declared that he should persist in it till the result of the consultation with the militia officers, or some new circumstance should occur to explain the designs of the mutineers; that in pursuing this line of conduct he should counteract the sense of some gentlemen whose feelings on the occasion were keen, and the opinions of others who thought the situation of congress under the existing circumstances extremely awkward, precarious, and unjustifiable to their constituents. Subsequent circumstances, indicating a collusion between the committee and the mutineers, overcame his opposition to the report for their removal.

When commenting on this occurrence, he remarked :—

“It was the duty of government to provide effectually against the repetition of such outrages, and to put itself in a situation to give, instead of receiving the law; and to manifest that its compliance was not the effect of necessity, but of choice. This was not to be considered as the disorderly riot of an armed mob, but as the deliberate mutiny of an incensed soldiery, carried to the utmost point of outrage short of assassination. The licentiousness of an army is to be dreaded in every government; but in a republic it is more particularly to be restrained, and when directed against the civil authority, to be checked with energy and punished with severity. The merits and sufferings of the troops might be a proper motive for mitigating punishment, when it was in the power of the government to inflict it; but there was no reason for relaxing in



the measures necessary to arrive at that situation Its authority was first to be vindicated, and then its clemency to be displayed.

“The rights of government are as essential to be defended as the rights of individuals. The security of the one is inseparable from that of the other; and indeed in every new government, especially of the popular kind, the great danger is, that public authority will not be sufficiently respected ”

After advertng to the probability of an accession of strength to the mutineers, he observed.—“In this state of things, decision was most compatible with the safety of the community as well as the dignity of government. Though no general convulsion might be apprehended, serious mischief might attend the progress of the disorder. Indeed, it would have been meanness to have negotiated and temporized with an armed banditti of four or five hundred men, who, in any other situation than surrounding a defenceless senate, could only become formidable by being feared. This was not an insurrection of a whole people, it was not an army with their officers at their head, demanding the justice of the country—either of which might have made caution and concession respectable, it was a handful of mutinous soldiers, who had equally violated the laws of discipline as the rights of public authority.”

“There was a propriety in calling for the aid of the militia in the first place for different reasons. Civil government may always with more peculiar propriety resort to the aid of the citizens to repel military insults or encroachments ’Tis there, it ought to be supposed, where it may seek its surest dependence; especially in a democracy, which is the creature of the people. The citizens of each state are, in an aggregate light, the citizens of the United States, and bound as much to support the representatives

of the whole as their own immediate representatives. The insult was not to congress personally, it was to the government, to public authority in general, and was very properly put on that footing. The only question is, whether there was greater danger to the city in attempting their reduction by force, than in endeavouring by palliatives to bring them to a sense of duty. It has been urged, and appeared to have operated strongly on the council, that the soldiers being already embodied, accustomed to arms, and ready to act at a moment's warning, it would be extremely hazardous to attempt to collect the citizens to subdue them, as the mutineers might have taken advantage of the first confusions incident to the measure to do a great deal of mischief before the militia could have assembled in equal or superior force.

"It is not to be denied but that a small body of disciplined troops, headed and led by their officers, with a plan of conduct, could have effected a great deal in similar circumstances; but it is equally certain that nothing can be more contemptible than a body of men used to be commanded and to obey, when deprived of the example and direction of their officers. They are infinitely less to be dreaded than an equal number of men who have never been broken to command, nor exchanged their natural courage for that artificial kind which is the effect of discipline and habit. Soldiers transfer their confidence from themselves to their officers, face danger by the force of example, the dread of punishment, and the sense of necessity. Take away these inducements, and leave them to themselves, they are no longer resolute than till they are opposed. The idea of coercion was the safest and most prudent, for more was to be apprehended from leaving them to their own passions, than from attempting to control them by force. The events corresponded with this reasoning—the departure of congress brought the matter to a crisis, and

the council were compelled, by necessity, to do what they ought to have done before through choice."

In concluding this sketch of Hamilton's services for the short period of eight months in the Congress of the Confederation, it is due to him to remark, that faint as this outline is, from the imperfect materials that exist, enough remains to show his commanding position, moral and intellectual.

In his letters to the superintendent of finance, when speaking of the temper of the New-York legislature, he observed that, to effect a change of their system, "mountains of prejudice and particular interest are to be levelled," that his efforts to introduce efficient modes of taxation had failed, and though "there was a pretty general opinion that the system of funding for payment of old debts, and for procuring further credit, was wise and indispensable, yet that a majority thought it would be unwise in one state to contribute in this way alone."

With such dispositions in that state, and with the general temper of the country and of congress, it was no trivial task to combat; yet while some around him are seen seeking safety in compromises between their sense of duty and their love of popularity, between the general welfare and state interests, he is beheld, from the commencement of his career, boldly meeting all the public prejudices, confuting every objection as it arose, standing almost alone in opposition to measures which he could not believe were promotive of the country's good, and urging in their stead the adoption of an energetic and comprehensive system of national policy—a system of policy which has controlled the destinies of this republic, and of which the great cardinal principles have become American maxims of state.

As to its exterior relations, his views are seen to have been, Neutrality with foreign powers—Friendship with "the Indian nations"—the Gradual "acquisition" of their lands by purchase, and, "as the most just and humane way of

removing them, the extending our settlements to their neighbourhood."

As to the defence of the country, a small compact Peace establishment, land and naval, capable of being augmented without derangement.

As to its commerce, Treaties of equality and reciprocity of short duration, reserving the power of aiding domestic industry ; light and easy duties on imports, as "a mode of revenue which preserves a just measure to the abilities of individuals, promotes frugality, and taxes extravagance," so imposed as to encourage, by judicious discriminations, by "bounties and by premiums," the production of articles of primary necessity.

As to the Fiscal system, a revenue to be derived from "permanent funds," to be imposed and collected by congress, and, lest the public burdens should too much press, or the public resources be too dependent upon commerce, duties upon certain luxuries, and a small land tax, as auxiliaries.

The revenue to become the basis of "Foreign loans" to Fund the debt, and of a "Sinking fund" to discharge it.

The "Assumption" of the debts of the states incurred for the common defence, and a provision for every class of the public creditors, without any discrimination between the original holders or purchasers.

A National Bank, as an instrument to facilitate the payment and collection of duties, and to aid and regulate the commerce between the states by supplying and maintaining an uniform currency.

It is important to remark that such was his policy at this time, when no motives of ambition, no calculations of personal interest, could possibly have prompted them—when they only could have been entertained and avowed from a conviction that they would promote the general welfare—when, as he wrote to Clinton, "he had no future views in public life."

Views such as these could only have been entertained by a mind fraught with the great idea of regulating the conflicting forces which disturbed the political system by a general pervading and controlling law—with the idea of instituting a government duly checked with powers and organs “adequate to the exigencies” of the nation.

In his address urging Rhode Island to grant to Congress the power of levying an impost, he stated that “a Representative Republic ought to have the means necessary to answer the end of its institution,” and as a justification of the demand, he asserted that the measure, if not within the letter, is within the spirit of the confederation. “Congress by that are empowered to borrow money for the use of the United States, and, by implication, to concert the means necessary to accomplish the end.” Manifest as these inductions are, and repudiating, as he had done totally, the idea of a resort to force, he saw that this implication only gave to congress the power “to concert the means.” Hence he proposed that it should be empowered to nominate its own officers to collect the revenue from *individuals*.

This was the initiatory idea of a General Government with organs to exercise its powers directly, without state intervention\*—an expedient now obvious to every mind, but how far removed from the prevailing sentiment of the country, and from the system of the confederation with its congress of ambassadors !

\* This proposition is previously stated in full, as presented by him on the twentieth of March. The affirmative states were Connecticut, New-York, New-Jersey, and Pennsylvania. The votes of the delegates were—*ayes*, Bland, Boudnot, Clark, Condict, Dyer, Floyd, Hamilton, McComb, Montgomery, Peters, Rutledge, Wilson, Wolcott. Those against it were Arnold, Bedford, Collins, Fitzsummons, Gervais, Gilman, Gorham, Hawkins, Hemsley, Higginson, Holten, A. Lee, F. F. Lee, Madison, Mercer, Osgood, White, Williamson 4 J C 177 Two only of the southern members voted for it —Bland and Rutledge

Defeated in this measure, and disappointed in his other exertions to prop the national edifice, yet full of apprehension for the continuance of the union, he felt that it was due to the people of this great country, while yet united under a general confederacy, to appeal to them in their own behalf.

With this view he prepared the following resolutions; but finding that they could not succeed, and unwilling that a new obstacle should be raised by the formal rejection of propositions of such magnitude, he did not bring them forward.

On the draft this endorsement, made by himself, is to be seen—"Intended to be submitted to congress in seventeen hundred and eighty-three, but abandoned for want of support!"

From the little care he bestowed upon his manuscripts, the fact of this memorandum having been made by him, would seem to indicate Hamilton's desire to preserve this evidence of his early-matured purpose to establish a balanced constitutional government, with distinct departments and adequate powers.

"Whereas, in the opinion of this congress, the confederation of the United States is defective in the following essential points.

"First, and generally, in confining the federal government within too narrow limits; withholding from it that efficacious authority and influence in all matters of general concern, which are indispensable to the harmony and welfare of the whole; embarrassing general provisions by unnecessary details and inconvenient exceptions incompatible with their nature, tending only to create jealousies and disputes respecting the proper bounds of the authority of the United States, and of that of the particular states, and a mutual interference of the one with the other.

"Secondly—In confounding legislative and executive powers in a *single* body, as that of determining on the

number and quantity of force, land and naval, to be employed for the common defence, and of directing their operations when raised and equipped ; with that of ascertaining and making requisitions for the necessary sums or quantities of money to be paid by the respective states into the common treasury, contrary to the most approved and well-founded maxims of free government, which require that the LEGISLATIVE, EXECUTIVE, and JUDICIAL authorities should be deposited *in distinct and separate hands*.

“Thirdly—In the want of a FEDERAL JUDICATURE, having cognizance of all matters of general concern in the last resort, especially those in which foreign nations and their subjects are interested ; from which defect, by the interference of the local regulations of particular states militating, directly or indirectly, against the powers vested in the union, the national treaties will be liable to be infringed, the national faith to be violated, and the public tranquillity to be disturbed.

“Fourthly—In vesting the United States, in congress assembled, with the *power of general taxation*, comprehended in that ‘ of ascertaining the necessary sums of money to be raised for the common defence, and of appropriating and applying the same for defraying the public expenses ;’ and yet rendering that power, so essential to the existence of the union, nugatory, by withholding from them all control over either the imposition or the collection of the taxes for raising the sums required, whence it happens that the inclinations, not the abilities, of the respective states are, in fact, the criterion of their contributions to the common expense, and the public burden has fallen, and will continue to fall, with very unequal weight.

“Fifthly—In fixing a rule for determining the proportion of each state towards the common expense, which, if practicable at all, must in the execution be attended with great expense, inequality, uncertainty, and difficulty.

“**Sixthly**—In authorizing congress ‘to borrow money, or emit bills, on the credit of the United States,’ without the power of establishing funds to secure the repayment of the money or the redemption of the bills emitted, from which must result one of these evils—either a want of sufficient credit in the first instance to borrow, or to circulate the bills emitted, whereby in great national exigencies the public safety may be endangered, or, in the second instance, frequent infractions of the public engagements, disappointments to lenders, repetitions of the calamities of depreciating paper, a continuance of the injustice and mischiefs of an unfunded debt, and, first or last, the annihilation of public credit. Indeed, in authorizing congress at all to emit an *unfunded* paper as the sign of value; a resource, which, though useful in the infancy of this country, indispensable in the commencement of the revolution, ought not to continue a formal part of the constitution, nor ever hereafter to be employed, being in its nature pregnant with abuses, and liable to be made the engine of imposition and fraud, holding out temptations equally pernicious to the integrity of government and to the morals of the people.

“**Seventhly**—In not making proper or competent provision for interior or exterior defence: for interior defence, by leaving it to the individual states to appoint all regimental officers of the land forces, to raise the men in their own way, to clothe, arm, and equip them, at the expense of the United States; from which circumstances have resulted, and will hereafter result, great confusion in the military department, continual disputes of rank, languid and disproportionate levies of men, an enormous increase of expense for want of system and uniformity in the manner of conducting them, and from the competitions of state bounties;—by an ambiguity in the fourth clause of the sixth article, susceptible of a construction which would devolve upon the particular states in time of peace the care of their own



defence both by sea and land, and would preclude the United States from raising a single regiment or building a single ship before a declaration of war, or an actual commencement of hostilities, a principle dangerous to the confederacy in different respects, by leaving the United States at all times unprepared for the defence of their common rights, obliging them to begin to raise an army and to build and equip a navy at the moment they would have occasion to employ them, and by putting into the hands of a few states, who from their local situations are more immediately exposed, all the standing forces of the country, thereby not only leaving the care of the safety of the whole to a part, which will naturally be both unwilling and unable to make effectual provision at its particular expense, but also furnishing grounds of jealousy and distrust between the states, unjust in its operation to those states in whose hands they are, by throwing the exclusive burden of maintaining those forces upon them, while their neighbours immediately, and all the states ultimately, would share the benefits of their services: for exterior defence, in authorizing congress ‘to build and equip a navy,’ without providing any means of manning it, either by requisitions of the states, by the power of registering and drafting the seamen in rotation, or by embargoes in cases of emergency, to induce them to accept employment on board the ships of war; the omission of all which leaves no other resource than voluntary enlistment; a resource which has been found ineffectual in every country, and for reasons of peculiar force, in this.

“Eighthly—In not vesting in the United States A GENERAL SUPERINTENDENCE OF TRADE, equally necessary in the view of revenue and regulation: of revenue, because duties on commerce, when moderate, *are* among the most agreeable and productive species of it which cannot without great disadvantages be imposed by particular states.

while others refrain from doing it, but must be imposed in concert, and by laws operating upon the same principles, at the same moment, in all the states; otherwise those states which should not impose them would engross the commerce of such of their neighbours as did: of regulation, because by general prohibitions of particular articles, by a judicious arrangement of duties, sometimes by bounties on the manufacture or exportation of certain commodities, injurious branches of commerce might be discouraged, favourable branches encouraged, useful products and manufactures promoted; none of which advantages can be effectually attained by separate regulations without a general superintending power; because, also, it is essential to the due observance of the commercial stipulations of the United States with foreign powers, an interference with which will be unavoidable if the different states have the exclusive regulation of their own trade, and of course the construction of the treaties entered into.

“Ninthly—In defeating essential powers by provisos and limitations inconsistent with their nature, as the power of making treaties with foreign nations, ‘provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the importation or exportation of any species of goods or commodities whatever;’ a proviso susceptible of an interpretation which includes a constitutional possibility of defeating the treaties of commerce entered into by the United States. As also the power ‘of regulating the trade, and managing all affairs with the Indians, not members of any states; *provided*, that the legislative right of any state within its own limits be not infringed or violated,’ and others of a similar nature.

“Tenthly—In granting the United States the sole power ‘of regulating the alloy and value of coin struck by their own authority, or by that of the respective states,’ without the power of regulating foreign coin in circulation, though one is essential to the due exercise of the other, as there ought to be such proportions maintained between the national and foreign coin, as will give the former a preference in all internal negotiations ; and without the latter power, the operations of government, in a matter of primary importance to the commerce and finances of the United States, will be exposed to numberless obstructions.

“Eleventhly—In requiring the assent of nine states to matters of principal importance, and of seven to all others, except adjournments from day to day, a rule destructive of vigour, consistency, or expedition, in the administration of affairs, tending to subject the *sense* of the majority to *that* of the minority, by putting it in the power of a small combination to retard and even to frustrate the most necessary measures, and to oblige the greater number, in cases which require speedy determinations, as happens in the most interesting concerns of the community, to come into the views of the smaller ; the evils of which have been felt in critical conjunctures, and must always make the spirit of government a spirit of compromise and expedience, rather than of system and energy.

“Twelfthly—In vesting in the foederal government the sole direction of the interests of the United States in their intercourse with foreign nations, without empowering it to pass **ALL GENERAL LAWS** in aid and support of the laws of nations ; for the want of which authority, the faith of the United States may be broken, their reputation sullied, and their peace interrupted, by the negligence or misconception of any particular state.

“And whereas experience hath clearly manifested that the powers reserved to the union in the confederation, are

unequal to the purpose of effectually drawing forth the resources of the respective members, for *the common welfare and defence* ; whereby the United States have, upon several occasions, been exposed to the most critical and alarming situations, have wanted an army adequate to their defence, and proportioned to the abilities of the country ; have on account of that deficiency seen essential posts reduced—others imminently endangered—whole states, and large parts of others, overrun and ravaged by small bodies of the enemy's forces ; have been destitute of sufficient means of feeding, clothing, paying, and appointing that army, by which the troops, rendered less efficient for military operations, have been exposed to sufferings, which nothing but unparalleled patience, perseverance, and patriotism could have endured. Whereas, also, the United States have been too often compelled to make the administration of their affairs a succession of temporary expedients, inconsistent with order, economy, energy, or a scrupulous adherence to the public engagements, and now find themselves, at the close of a glorious struggle for independence, without any certain means of doing justice to those who have been its principal supporters—to an army which has bravely fought, and patiently suffered—to citizens who have cheerfully lent their money—and to others who have in different ways contributed their property and their personal service to the common cause ; obliged to rely for the only effectual mode of doing that justice, by funding the debt on solid securities, on the precarious concurrence of thirteen distinct deliberatives, the dissent of either of which may defeat the plan, and leave these states, at this early period of their existence, involved in all the disgrace and mischiefs of violated faith and national bankruptcy And whereas, notwithstanding we have, by the blessing of Providence, so far happily escaped the complicated dangers of such a situation, and

now see the object of our wishes secured by an honourable peace, it would be unwise to hazard a repetition of the same dangers and embarrassments, in any future war in which these states may be engaged, or to continue this extensive empire under a government unequal to its protection and prosperity. And whereas, it is essential to the happiness and security of these states, that their union should be established on the most solid foundations, and it is manifest that this desirable object cannot be effected but by a GOVERNMENT, capable, both in peace and war, of making every member of the union contribute in just proportion to the common necessities, and of combining and directing the forces and wills of the several parts to a general end; to which purposes, in the opinion of congress, the present confederation is altogether inadequate. And whereas, on the spirit which may direct the councils and measures of these states, at the present juncture, may depend their future safety and welfare—Congress conceive it to be their duty, freely to state to their constituents the defects which, by experience, have been discovered in the present plan of the federal union, and solemnly to call their attention to a revision and amendment of the same. Therefore resolved, That it be earnestly recommended to the several states to appoint a convention, to meet at — on the — day of —, with full powers to revise the confederation, and to adopt and propose such alterations as to them shall appear necessary, to be finally approved or rejected by the states respectively—and that a committee of — be appointed to prepare an address upon the subject.” .

These resolutions, as appears from a communication to General Washington, Hamilton prepared with a view to an address from congress as soon as they had ratified the definitive treaty. “In a letter,” he says, “which I wrote to you several months ago, I intimated that it might be in

your power to contribute to the establishment of our fœderal union upon a more solid basis. I have never since explained myself. At the time, I was in hopes congress might have been induced to take a decisive ground, to inform their constituents of the imperfections of the present system, and of the impossibility of conducting the public affairs with honour to themselves and advantage to the community, with powers so disproportioned to their responsibility; and having done this in a full and forcible manner, to adjourn the moment the definitive treaty was ratified. In retiring at the same juncture, I wished you in a solemn manner to declare to the people your intended retreat from public concerns; your opinion of the present government, and of the absolute necessity of a change. Before I left congress I despaired of the first, and your circular letter to the states had anticipated the last.

“I trust it will not be without effect, though I am persuaded it would have had more, combined with what I have mentioned; at all events, without compliment, sir, it will do you honour with the sensible and well-meaning, and ultimately, it is to be hoped, with the people at large, when the present epidemic frenzy has subsided.”

With this purpose, not less grand in the conception than in the mode in which it was to be effected, Hamilton closed his career in congress.

## CHAPTER XIX.

[1783.]

A rumour that the definitive treaty had been received, led to a request that Hamilton would remain in congress a few days. The apprehensions he had entertained of obstacles to its conclusion being thus dispelled, he was much elated with the event, and with the prospect, after so long a public career, of enjoying the repose of private life.

"I am strongly urged," he wrote to his wife, "to stay a few days for the ratification of the treaty; at all events, however, I will not be long from you. I give you joy of the happy conclusion of this important work in which your country has been engaged. Now, in a very short time, I hope we shall be happily settled in New-York. My love to your father. Kiss my boy a thousand times. A thousand loves to yourself."

This information proving to be erroneous, he proceeded by an interior route to Albany, where he remained until the evacuation of New-York in November.

What a tide of thoughts must have passed through his mind as he now sailed the tranquil Hudson, on whose margin he passed many of his happiest after hours, and breathed his latest sigh! How changed his present from his former feelings, when hastening along its alarmed borders on his lonely, anxious way—amid deserted dwellings, forsaken fields, a discordant population—to extort reluctant aid from Gates, he detected those incipient intrigues which would have lost Washington to his country!

Where, before, the timid shallop rarely ventured to dart

its course across the mournful stream, was now seen the bold canvass of its unrivalled craft wafting to their liberated mart its joyous fugitives ; each point and inlet, as he passed, reviving some incident of his own eventful career, or of his country's glorious history.

Poughkeepsie would recall the moment, when, in concert with Schuyler, were framed those memorable resolutions, the first to recommend a general convention to establish a constitution. Approaching Fishkill, he would recur to the time when, with early wisdom, he portrayed the evils of a weak and the blessings of an efficient government. As his eye turned upon the heights of Newburgh, now gleaming in the morning sun, he would behold, as it were again, the dark cloud which hung threatening over his companions in arms, ready to burst and overwhelm them, until dissipated by his powerful interposition. West Point, crowned with autumnal gloom, spoke of the weary hours of anxious consultation with his chief, the marked victim of a deep laid treason. The detection, the pursuit, the escape of Arnold, were all before him. Beyond, the scene of André's fate, immortalized by the touching narrative which would have veiled his error with his misfortunes. The humble ferry-house at Greensburgh would awaken happier associations, where, retiring in the pride of a manly temper from the family of Washington, he devoted his first leisure to those capacious plans of national polity which placed him in early manhood among the foremost sages of the revolution. And now, New-York opened before him in all the often recollected magnificence of its capacious bay, its world-inviting waters, its peaceful shores, its guardian isles, whence proudly rose against the evening sky, the flag of the Union, announcing that the conflict was over, and seeming to invite him to new triumphs in this much-loved scene of his youthful imaginings, efforts, and distinctions. Cordial were the greetings of this grateful city, as it welcomed, in its



once stranger boy, the now powerful advocate of mercy to its apprehensive denizens, hastening to shield them from persecution for the venial offence of mistaken loyalty.

The impression which his congressional career had produced, is shown in the letters received by him at this time.

McHenry, who had recently taken a seat in congress, writes :—

Princeton, Oct. 22, 1783

DEAR HAMILTON,

The homilies you delivered in congress, are still recollected with pleasure. The impressions they made, are in favour of your integrity, and no one but believes you a man of honour and republican principles. Were you ten years older, and twenty thousand pounds richer, there is no doubt but that you might obtain the suffrages of congress for the highest office in their gift. You are supposed to possess various knowledge, useful, substantial, and ornamental. Your very grave, and your cautious—your men who measure others by the standard of their own creeping politics, think you sometimes intemperate, but seldom visionary, and that were you to pursue your object with as much cold perseverance as you do with ardour and argument, you would become irresistible.

In a word, if you could submit to spend a whole life in dissecting a fly, you would be, in their opinion, one of the greatest men in the world. Bold designs—measures calculated for their rapid execution—a wisdom that would convince, from its own weight—a project that would surprise the people into greater happiness, without giving them an opportunity to view it and reject it—are not adapted to a council composed of discordant materials, or to a people which have thirteen heads, each of which pays superstitious adorations to inferior divinities.

I have reported on Fleury's case on the principle you recommend. I fear his half-pay will not be granted.

Adieu, my dear friend, and in the days of your happiness drop a line to your

McHENRY.

P. S.—Our exemplification of the treaty has passed, and will be transmitted to the state officially.

The other was from Jay, at Passy :—

“ DEAR SIR,

“ You was always of the number of those I esteemed, and your correspondence would be both interesting and agreeable I had heard of your marriage, and it gave me pleasure, as well because it added to your happiness, as because it tended to fix your residence in a state of which I long wished you to be and remain a citizen.

“ The character and talents of delegates to congress daily become more and more important, and I regret your declining that appointment at this interesting period Respect, however, is due to the considerations which influence you; but as they do not oppose your accepting a place in the legislature, I hope the state will still continue to derive advantage from your services: much remains to be done, and labourers do not abound.

“ I am happy to hear that the terms of peace and the conduct of your negotiators give general satisfaction. But there are some of our countrymen, it seems, who are not content, and that too with an article which I thought to be very unexceptionable, viz: the one ascertaining our boundaries. Perhaps those gentlemen are latitudinarians.

“ The American newspapers for some months past contain advices which do us harm; violences and associations against the tories pay an ill compliment to government, and impeach our good faith in the opinion of some, and our magnanimity in the opinion of many. Our reputa-

tion, also, suffers from the apparent reluctance to taxes, and the ease with which we incur debts without providing for their payment. The complaints of the army—the jealousies respecting congress—the circumstances which induced their leaving Philadelphia—and the too little appearance of national spirit pervading, uniting, and invigorating the confederacy, are considered as omens which portend the diminution of our respectability, power, and felicity. I hope that as the wheel turns round, other and better indications will soon appear. I am persuaded that America possesses too much wisdom and virtue to permit her brilliant prospects to fade away for want of either.

“The tories are almost as much pitied in these countries as they are execrated in ours; an undue degree of severity towards them would, therefore, be impolitic, as it would be unjustifiable. They who incline to involve that whole class of men in indiscriminate punishment and ruin, certainly carry the matter too far. It would be an instance of unnecessary rigour and unmanly revenge, without a parallel, except in the annals of religious rage in times of bigotry and blindness. What does it signify where nine-tenths of these people are buried? Victory and peace should in my opinion be followed by clemency, moderation, and benevolence, and we should be careful not to sully the glory of the revolution by licentiousness and cruelty. These are my sentiments, and however unpopular they may be, I have not the least desire to conceal or disguise them. Believe me to be, with great regard and esteem.”

Notwithstanding urgent solicitations, Hamilton adhered to his purpose of retiring wholly from public life, and was soon immersed in the labours of his profession; in which, without the advantages of much previous study, by the energies of a mind peculiarly adapted to the analysis of first

principles, he rose to an unequalled, unapproached distinction.

His letter to McHenry was written to obtain an exemption of the treaty. The state of New-York was ruled at this time by cruel counsels. Taking advantage of the doubt as to the period of its execution, it passed laws in direct violation of this treaty, and, in despite of the most earnest intercessions, refused to stay the prosecutions commenced against proscribed persons. Shocked at these proceedings, Hamilton took up the cause of these persecuted individuals with all the zeal of his boundless benevolence

The definitive treaty having arrived, he addressed a memorial to congress asking a record of it; in which, to prompt its immediate ratification, he stated that there appeared to be no probability that the legislature will interpose its authority to stay the prosecutions until it is announced; a measure that would "conduce to the security of a great number of individuals who derive their hopes of safety from the national faith."

Hamilton now commenced his professional career, and it is one of the most interesting incidents of that career, that the first exertion of his talents as an advocate, was in the cause of clemency and good faith. It was in the inmost privacy of his quiet hours, reflecting on such exertions, that he exclaimed, "The Almighty has given me a good head, and thank God, he has also given me a good heart."

This was a suit in the mayor's court of the city of New-York, to recover the rents of property held by the defendant under an order of Sir Henry Clinton, and was founded on a recent enactment called "The Trespass Act." This act authorized an action of trespass in favour of persons who had left their abodes in consequence of the invasion of the enemy, against those who had been in pos-

session of them during the war, and expressly precluded a justification of this occupancy by virtue of a military order. It was contended that the case was not within the statute; that the laws of nations controlled it and barred the suit, and that the treaty included an amnesty, which extinguished the statute right.

No precedent, it is believed, exists for such an act of legislation; an act providing that after a war solemnly terminated by a treaty duly executed, suits could be commenced by the subjects of one belligerent against those of another for injuries committed during the war by military order.

No case could have arisen of greater interest, higher moment, or larger considerations. It was a question of national faith and national character—it was a question between the subjects of two independent nations, relating to transactions in a war between those nations.

It involved a determination of the powers of the confederacy, and of its constitutional supremacy over a law of a member of that confederacy. It was of the most grave and weighty magnitude, for it would decide whether a state tribunal would recognise the laws of nations and of the confederation as the rule of its decisions when in conflict with a local statute. It might determine the conduct of Great Britain as to the execution of the treaty, the surrender of the posts, and the peace of the union.

It involved property of a great amount, and numerous cases depending on the same principle. It was the decision of a controversy between a wealthy merchant—a British subject, an adherent of the enemy—and a fugitive, an exile, a poor American widow, impoverished by the war. It was tried while the strife of the fierce contest was recent, in the midst of a dilapidated and yet disordered city, when all around were beheld the ravages of the invader, in a hall of justice desecrated and marred by

the excesses of its late occupants, a licentious soldiery. On one side was the attorney-general of the state, armed with all its authority to sustain its laws, representing the passions of an inflamed community, pleading for the widowed exile. On the other stood Hamilton, resting on the justice of this mighty cause.

The plaintiff's task was obvious. It was to insist upon the statute. The statute was explicit. Both the parties were within its provisions. It was obligatory, and no court of that state, no court especially of limited jurisdiction, could look beyond it. Look where? To the laws of nations,—laws having no settled foundation, undergoing constant change, affording no certain rule, and which ought to have no influence on the government of this state or upon the people. The war was unjust, admitted by the enemy to be unjust. By an unjust war, the unjust party acquires no rights, for no rights can be derived from an injury. It was not a solemn war, and therefore conferred no rights upon the captor. Nor was that court to be controlled by the treaty. New-York was a sovereign, independent state. Congress had no right to bind the state in this matter, it was interfering with its internal police. Can they by treaty give away the rights of its citizens? A case like this had never before been heard of. It was without a precedent, and stood upon the statute.

Hamilton felt the advantageous position of his opponent. He passed by the immediate parties to the suit, and spoke to the question. In a brilliant exordium,\* he dilated on its importance in all its various aspects; declared that the decision might affect all the relations of two great empires, might be discussed in Europe, and might produce,

\* The outline of this speech is framed from an extended brief, giving all the points of the argument and the authorities

according to the issue, a good or bad impression of our country. It would establish precedents that might give a complexion to future decisions, would remain a record of the spirit of our courts, and would be handed down to posterity as indicating the character of our jurisprudence. It was a question of a most comprehensive nature; its merits include all the principles which govern the intercourse between nations. Heretofore our courts have seemed to consider themselves in an inferior light; their decisions must hereafter form precedents.

Having thus appealed to the pride of the court, he proceeded:—"We are told there is no precedent. Then, indeed, it is a new case, and a new case must be determined by the law of nature and the public good. Where the law is silent, the judge speaks; and the most ancient authority states that in England cases were adjudged according to equity, before the customs of the realm were written and made certain. This question must be decided by the laws of nations. But what, it is asked, are the laws of nations? Where are they to be found?—They are the deductions of reason, to be collected from the principles laid down by writers on the subject and established by the authorized practice of nations, and are a part of the law of the land. The laws of nations and the laws of war are part of the common law."

He then stated the two great divisions of the laws of nations. The natural, necessary, or internal, universally binding on the conscience of nations; but in its external obligations, controlled by the positive or voluntary law for the good of mankind, which is equally obligatory, and is enjoined by the natural law.

By the necessary law, the party making an unjust war acquires no rights, and is bound to make reparation for all damages. By the voluntary law—which may be defined, that system of rules which grow out of the independence

of distinct political associations, qualifying their natural rights as individuals—both parties have equal rights, having no common judge; and the effects of a war on both sides, are the same.

These effects are principally impunity, the acquisition of property; a rule established to promote the general peace of mankind, by removing discussions about the justice of the war, and the proportion of the damages to the injury and the security of purchasers, especially neutrals.

But it is objected, this was not a solemn war. The approved practice of nations is against this objection. But it was a solemn war. Formalities are arbitrary—an act of parliament authorized hostilities. The declaration of independence speaks of an open war subsisting. Congress formally authorized our citizens to cruise. It has been said that the state of New-York has no common law of nations. The answer is, *that law* results from the relations of universal society—that our constitution admits the common law, of which the law of nations is a part—and that the United States direct our foreign intercourse, and have expressly become parties to the law of nations. What are the effects of a war? The general proposition is, that movable goods belong to the captor forever, as soon as battle is over; the fruits of immovables, while they are in possession. Other rules have been laid down with respect to movables; but the true rule is, the battle being over. The ancient precedents of pleading are not that the prize remained a night with the enemy, but that it was gained by battle of the enemy; and pleading is the touchstone of the law. The common law carries the rights of war so far as to give property in a prisoner, and an action of trespass for taking him away. Hence, we see the common law not only adopts the law of nations in its full extent as a general doctrine, but particular adjudications recognise the operation of capture.



The second branch of the discussion related to the effect of the treaty of peace, and tended to show that this action could not be maintained without a violation of the treaty; every treaty of peace including an amnesty, which is of its very essence, between private persons as well as the contending publics. To the objection, that congress had no right to bind the state, that it was meddling with its internal police, he replied, that on that construction, "the confederation was the shadow of a shade;" but that congress had an unquestionable right, that "the sovereignty and independence of the people began by a federal act; that our external sovereignty is only known in the union—that foreign nations only recognise it in the union; that the declaration of independence was the fundamental constitution of every state, all of which was acceded to by the convention of New-York, which does not pretend to authenticate the act, but only to give their approbation to it:" that hence it followed, "that congress had complete sovereignty; that the union was known and legalized in the constitution of New-York previous to the confederation, and that the first act of the state government adopted it as a fundamental law; from which reflections," he says, "we are taught to respect the sovereignty of the union, and to consider its constitutional powers as not controllable by any state."

The confederation is an abridgment of those powers; but, mutilating as it is, it leaves congress the full and exclusive powers of war, peace, and treaty. The power of making peace, is the power of determining its conditions. It is a rule of reason and law, that to whomsoever any thing is granted, that also is granted without which it cannot exist. If congress have not a power to adjust an equivalent for damages sustained, and remit the rest, they have no power to make peace. It is true that this power

powers in congress, excepting in prize causes, in all other matters the judges of each state must of necessity be judges of the United States, and they must take notice of the law of congress as a part of the law of the land. For it must be conceded, that the legislature of one state cannot repeal a law of the United States.

“What is to be done in such a case? It is a rule of law, that when there are two laws, one not repealing the other, expressly or virtually, the judges must construe them so as to make them stand together. That golden rule of the Roman orator may be applied: ‘*Primum igitur leges oportet contendere considerando utra lex ad majores, hoc est ad utiliores, ad honestiores ac magis necessarias res pertinent. Ex quo conficiscitur ut si leges duæ aut si plures aut quotcunque erunt conservari non possint quia discrepent inter se, ea maxime conservanda putetur quæ ad maximas res pertinere videntur*’—‘Where two or more laws clash, that which relates to the most important concerns ought to prevail.’

“Many of these arguments are on the supposition, that the trespass act cannot stand with the laws of nations and the treaty. It may, however, legally receive such a construction as will stand with all; and to give it this construction is precisely the duty of the court. We have seen that to make the defendant liable, would be to violate the laws of nations, and forfeit our character as a civilized people; to violate a solemn treaty of peace, and revive the state of hostility; to infringe the confederation of the United States, and to endanger the peace of the whole. Can we suppose all this to have been intended by the legislature? The answer is, ‘the law cannot suppose it: if it were intended, the act is void.’”

He then proceeded to state rules for the construction of statutes, which rendered this extremity unnecessary, quo-

ting the observation of Cato, "*Leges enim ipsæ cupiunt ut jure regantur.*"

The argument extended to an examination of the jurisdiction of the court, and to a minute investigation of the distinctions to be taken between citizens and British subjects, claiming the protection of the law of nations. It closed with a strong exposure of the criminality of the procedure, and with a vehement exhortation to preserve the confederation and the national faith; quoting the beautiful apothegm of Seneca, "*Fides sanctificissimum humani pectoris bonum est.*"

Amidst all the refinements which have been resorted to in order to impair the powers of the constitution, and to construe it as a compact of states, revocable at the will of either of the contracting parties, it is deeply interesting to advert to this early exposition of the true principles of the American union. An union formed indeed by compact, but by a compact between the people of these colonies with every individual colonist before the existence of states; recognised by the people of each state, in their state constitutions; confirmed by them as states, in the articles of confederation; and subsequently "perfected" in a constitution ordained and established by the people "for the United States of America."

The result of this argument was a triumph of right over usurpation. The decision indicates the difficulties with which the defendant contended; but the force of the treaty to overrule the inhibition against pleading a military order, was admitted. The court also declared—"Our union, as has been properly observed, is known, and legalized in our constitution, and adopted as a fundamental law in the first act of our legislature. The federal compact hath vested congress with full and exclusive powers

to make peace and war. This treaty they have made and ratified, and rendered its obligation perpetual; and we are clearly of opinion, that no state in this union can alter or abridge, in a single point, the federal articles or the treaty."

This decision is the more meritorious, because made by judges holding by a temporary tenure, soon after the session of a legislature which had shown a fixed purpose to persevere in their odious and impolitic violence.

A few days after this judgment was rendered, a large public meeting was convened,\* and an address to the people of the state was passed. This address,† after remarking on "the immense ability and learning" of the argument, exhorted the people, in their choice of senators, to elect men who would spurn any proposition that had a tendency to curtail the privileges of the people, and who would protect them from judicial tyranny. "Having confined themselves," it stated, "to constitutional measures, and disapproving all others, they were free in sounding the alarm. If their independence was worth contending for against a powerful and enraged monarch, and at the expense of the best blood of America, surely its preservation was worth contending for against those among ourselves who might impiously hope to build their greatness upon the ruins of that fabric which was so dearly established."

The legislature assembled soon after this meeting. Without waiting the result of an appeal, which the constitution secured, this decision, made in due form of law, and with unimpeached fairness, was brought before the assembly. Resolutions were passed, declaring it to be subversive

\* Sept 13th, 1784

† It is related to have been from the pen of Melancton Smith

of all law and good order, and the council of appointment were recommended at their next session, "to appoint such persons mayor and recorder of New-York, as will govern themselves by the known law of the land."

The ability displayed by Hamilton on these occasions, his liberal views and distinguished probity, gathered around him the enthusiastic confidence and affection of the better part of his fellow-citizens; and at a time when the judicial character of the state was to be formed, and, from the disturbed situation of the community, professional trusts were of the most important and extensive influence, he was foremost in endeavouring to secure to the laws an honest and enlightened administration.

This was not an easy task. The general relaxation of morals, an usual and most lamentable concomitant of war, was attended with a prevailing disregard of, and disposition to question, the decisions of the courts. In the political speculations to which the revolution had given rise, the sovereignty of the popular will, which was recognised as the basis of every proceeding, was pushed to the utmost extremes in its application; and wherever the operations of the laws bore hard, in the then unsettled relations of society, to recur to the elementary principles of government, and resolve every rule by its apparent adaptation to individual convenience, was the prevailing tendency of public opinion. The course of the contest, the means by which it had been conducted, the extravagant schemes it had engendered, gave every citizen a strong personal interest in its results, and, long before its termination, had divided the population into the opposite and hostile classes of debtors and creditors; each of which being compelled to unite, either for the common purpose of delaying or enforcing justice, acquired the dangerous, disorganizing, and formidable character of an intestine party.

The laxity of the national faith, as it sprung from, also

confirmed this distinction. The loose opinions which had gradually led on to an unjust discrimination between the public creditors of different descriptions, soon took possession of the popular mind, induced preferences equally unjust in private affairs, and ultimately prostrated all respect for the obligations of contracts, and for the tribunals by which they were to be expounded and enforced. This lawless spirit which pervaded the country, was principally shown in questions growing out of the claims of two classes of creditors, whose situation, though totally different, it was sought to confound,—those of British merchants, for debts incurred previous to the revolution, and the claims of the tories, either for money due to them, or for lands of which possession had been taken as enemies' property

The animosity natural to the combatants in a civil conflict; the enormities committed by the refugees, when the scale of war seemed to incline in their favour, or where they could continue their molestations with impunity; the harassing inroads and depredations which they had made on private property, and on the persons of non-combatants, and the harsh and cruel councils of which they were too often the authors, appeared to the people at large to sanction every species of retaliation, and to place the tories beyond the pale of humanity.

This was merely the popular feeling. Both the governments of the United States, and of the individual states, with few exceptions, resisted these attempts, and sought to instil a spirit of moderation and forbearance, becoming the victorious party. In the progress of the conflict, and particularly in its earliest periods, attainder and confiscation had been resorted to generally, throughout the continent, as a means of war. But it is a fact important to the history of the revolting colonies, that the acts prescribing penalties, usually offered to the persons against whom they

were directed the option of avoiding them, by acknowledging their allegiance to the existing governments

It was a preventive, not a vindictive policy. In the same humane spirit, as the contest approached its close and the necessity of these severities diminished, many of the states passed laws offering pardons to those who had been disfranchised, and restoring them to the enjoyment of their property ; with such restrictions only as were necessary for the protection of their own citizens. In others, different councils unfortunately prevailed. In New-Jersey, meetings were held urging a non-compliance with the treaty, in consequence of the non-fulfilment by England of the seventh article, stipulating the return of the negroes and the restoration of the posts.

In Virginia,\* the house of delegates resolved,† “ That confiscation laws, being founded on legal principles, were strongly dictated by that principle of common justice which demands that if virtuous citizens, in defence of their natural rights, risk their life, liberty, and property on their success ; vicious citizens who side with tyranny and oppression, or cloak themselves under the mask of neutrality, should at least hazard their property, and not enjoy the labours and dangers of those whose destruction they wished. And it was unanimously declared, that all demands and requests of the British court for the restitution of property confiscated by this state, being neither supported by law, equity, or policy, are wholly inadmissible ; and that our delegates be instructed to move congress that they may direct their delegates, who shall represent these states in a general congress for adjusting a peace or truce, neither to agree to any such restitution, or submit that the laws made by any independent state of this union, be

\* Almon's Remembrances, p 92, v 10, 2d part.

† December 17th, 1782

subject to the adjudication of any power or powers on earth ”

A proclamation was subsequently issued by its governor, enjoining all those who had adhered to the enemy since the nineteenth April, seventeen hundred and seventy-five, or had been expelled by an act of the legislature, or who had borne arms against the commonwealth, to leave the state. And an address from the county of Caroline was presented to the legislature, stating, “ they see the impolicy, injustice, and oppression of paying British debts ”

In Massachusetts, a committee of the legislature of which Samuel Adams was chairman reported that no person who had borne arms against the United States, or lent money to the enemy to carry on the war, should *ever* be permitted to return to the state \* Resolutions of an intemperate character were also brought forward at public meetings in Maryland , and a bill containing many objectionable features was introduced in the popular branch of its legislature, but it was resisted with great eloquence, admirable sense, and unyielding firmness in the senate by two respected individuals, Charles Carroll and Robert Goldsborough, and was essentially modified.

In New-York, the division of public sentiment at the opening of the revolution being very great, each party viewed the other with the most jealous eyes, and felt more seriously the importance of individual exertions. The first act of hostility invited retaliation. Instead of looking to general results, the people of that state were driven to desperation by their continued uncertainty and alarm from dangers which menaced their double frontier.

The laws which were passed for their protection, for the apprehension of persons of “equivocal character,”

\* Report on the files of the general court of Massachusetts, March 16th, 1784



early in the warfare, were soon followed by the establishment of a board of commissioners of sequestration. An institution which, though at first confided to safe hands, was unavoidably intrusted with powers that naturally lead to abuse, and ultimately became the organ of many harsh and oppressive proceedings.

Civil discord striking at the root of each social relation, furnished pretexts for the indulgence of malignant passions; and the public good, that oft-abused pretext, was interposed as a shield to cover offences which there were no laws to restrain

The frequency of abuse, created a party interested both in its continuance and exemption from punishment, which at last became so strong, that it rendered the legislature of the state subservient to its views, and induced the enactment of laws attainting almost every individual whose connections subjected him to suspicion, who had been quiescent, or whose possessions were large enough to promise a reward to this criminal cupidity.

It must not be supposed that these attempts were unresisted. On the contrary, those who were most efficient in their support of the revolution—those who had incurred the greatest losses—some of those to whom the contest had offered few other fruits than an uninterrupted sacrifice of feeling and property, and who might with much plausibility have thus reimbursed themselves—offered a steady resistance to these arbitrary edicts; and when it was at last found to be unavailing, by appearing to unite in the measures of persecution, and by including in the number of the attainted the names of those whose proscription threatened to affect the personal interest of the most violent, showed them the danger of this game of intolerance.

These proceedings only exasperated the passions of the populace, and soon after the intelligence of peace, tumult-

uous meetings were convened under the thus disgraced name of "the sons of liberty," to denounce the tories, to menace them from returning to claim their estates, and to remonstrate with the legislature against measures that could affect titles by confiscation.

The circumstances under which the election in the city of New-York was held, bespeak the character of the now dominant party. A council had been created for the temporary government of the southern district of the state, who were directed to impose a prescribed oath to its electors—an oath that they had not been guilty of any past offences. In reference to this retrospective inquisition into the consciences of men, Hamilton remarked—"A share in the sovereignty of the state, which is exercised by the citizens at large in voting at elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist a free people; and it certainly, therefore, will never be admitted, that less ceremony ought to be used in divesting any citizen of that right, than in depriving him of his property. Such a doctrine would ill suit the principles of the revolution, which taught the inhabitants of this country to risk their lives and fortunes in asserting their *liberty*; or, in other words, their *right* to a *share* in the government. That portion of the sovereignty to which each individual is entitled, can never be too highly prized. It is that for which we have fought and bled; and we should cautiously guard against any precedents, however they may be immediately directed against those we hate, which may in their consequences render our title to this great privilege precarious."

These considerations were disregarded, and this oath was prescribed. The election was thus in the hands of a few violent persons, together with those who were tempted, by this bribe, to perjury.

As a consequence, the representation was composed of men of a similar character—the most conspicuous of whom was Aaron Burr—men chosen by an infuriate populace, in the midst of a disturbed and overawed city.

The proscribed petitioned for permission to return to their residences. This was a moment which magnanimity would have embraced to shield the defenceless ; but Clinton, in his opening speech to the legislature, threw all the weight of his powerful influence into the popular scale.

“While,” he said, “we recollect the general progress of a war which has been marked with cruelty and rapine—while we survey the ruins of this once flourishing city and its vicinity—while we sympathize in the calamities which have reduced so many of our virtuous fellow-citizens to want and distress, and are anxiously solicitous to repair the wastes and misfortunes we lament,” we cannot listen to these petitions. They were rejected, and a bill respecting alienism was passed, which was negatived, on great public principles, by the council of revision.

Two days after the vote on the recent adjudication as to the treaty, resolutions passed the assembly, calling on the governors of the states to interchange lists of the persons who had been banished, in order, as was professed, that the principles of the federal union might be adhered to and preserved. They were followed by others declaring that the rules of justice did not require—and that public tranquillity would not permit—that attainted adherents should be restored to the rights of citizens.

A bill was then introduced, under the specious title of “An act to preserve the freedom and independence of the state,” disfranchising all persons who had voluntarily remained in those parts of the state which had been occupied by the British, and adjudging them guilty of misprision of treason without trial, in direct contravention of the treaty. This bill was also rejected by the revisionary

council; one of the reasons assigned being, that its operations would be so extensive, that in most places of the obnoxious district it would be difficult, and in many impossible, to find men to fill the necessary offices even for conducting elections, until a new set of inhabitants could be procured!

A resolution was also introduced, that, notwithstanding the recommendations of congress, they could not comply with the fifth article of the treaty. At the same time an act to repeal the laws inconsistent with it, was rejected by North Carolina

It will be remarked, that through the whole of these proceedings intolerance sought to conceal its deformity under the mask of the demagogue—a watchful solicitude for liberty, and a distrust of designs to effect a revolution in the genius of the government.

It is an invidious office to accumulate testimony of the vitiated state of the popular feeling at this time, and to embody the evidence of facts tending to impair the national character, were not a lesson to be derived from them of infinite value—the tendency of the state governments in moments of excitement to violate the admitted maxims of public law, to disregard the most sacred obligations, and to encroach upon and undermine the rights of individuals, and that the only security of the American citizen against local violence and usurpation, is in his national character, and the broad protection which a well-balanced general government can alone give

To show the extent to which the rapacious spirit of the times was carried, but one more instance will be adduced. It was a proposal to confiscate the estates of “the society instituted by a charter from the British government for the propagation of the gospel in foreign parts,” in which light the British colonies and plantations were regarded in that charter—notwithstanding the fifth and sixth articles

of the treaty—notwithstanding the pure and benevolent purposes of its institution—notwithstanding that from its very nature it could not have had any agency in the war, nor have become the object of resentment and confiscation. This purpose called forth the indignant and determined opposition of Hamilton. He contended that a regard to honour, justice, and humanity, ought to be alone sufficient to restrain the legislature from wresting their estates from the hands of a charitable society which had committed no offence to incur a forfeiture; and *that* especially in an hour of profound tranquillity That if the articles of the treaty had been silent on the subject of confiscation, yet under a general treaty of peace, it being an established maxim of the law of nations, which is a part of the law of the land, that every such treaty virtually implies an amnesty for every thing done during the war, even by an active enemy, that the rights of this society were therefore necessarily secured; and that as the exclusive right of making peace and war belonged to the great federal head of the nation, every treaty made by their authority, was binding upon the whole people, uncontrollable by any particular legislature, and that any legislative act in violation of the treaty, was illegal and void; and that upon a different construction, “the confederation, instead of cementing an honourable union, would, with respect to foreign powers, be a perfidious snare, and every treaty of peace, a solemn mockery.”

However desirable it may have appeared to the magnanimous part of the community to bury their resentments from motives of benevolence, it became now apparent that their efforts could no longer be confined to mere persuasion, but that the fears of the considerate must be aroused to a general co-operation. The effect of popular violence, though steadily resisted by the American courts, was seen strongly operative in the councils of Great Britain. The

protection of the tories had, during the discussions of the provisional treaty, been a subject of much anxious negotiation. When she found that the recommendations of congress were wholly disregarded, England made these proceedings a ground for refusing the indemnities for spoiliations stipulated by the treaty, and for what was a source of more general interest and alarm, a refusal to deliver up the frontier posts, which kept in awe the whole interior of the country. Hamilton, who, as early as the spring of seventeen hundred and seventy-eight, had been the open advocate, if the revolution should be effected, of a general act of amnesty and oblivion, could no longer brook the tyranny of a small number of active demagogues, the founders of the democratic party in the state of New-York.

He resolved to come forward as a mediator between the passions and the true interests of the people. With this view, in the winter of seventeen hundred and eighty-four, he addressed a pamphlet "to the considerate citizens of New-York on the politics of the times, in consequence of the peace," under the signature of "PHOCION."

This brief production, written at a time when the author says "he has more inclination than leisure to serve the people, by one who has had too deep a share in the common exertions in this revolution to be willing to see its fruits blasted by the violence of rash or unprincipled men, without at least protesting against their designs," contains an earnest appeal to the friends of liberty, and to the true whigs, on the enormity of the recent laws passed by men "bent upon mischief, practising upon the passions of the people, and propagating the most inflammatory and pernicious doctrines."

The persons alluded to, he says, "pretend to appeal to the spirit of whigism, while they endeavour to put in motion all the furious and dark passions of the human mind. The spirit of whigism is generous, humane, beneficent, and

just. These men inculcate revenge, cruelty, persecution, and perfidy. The spirit of whigism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial, and conviction of some crime declared by antecedent laws, reprobates equally the punishment of the citizen by arbitrary acts of the legislature, as by the lawless combinations of unauthorized individuals; while these men are the advocates for expelling a large number of their fellow-citizens unheard, untried; or, if they cannot effect this, are for disfranchising them in the face of the constitution, without the judgment of their peers, and contrary to the law of the land."

The danger of this arbitrary power, the extent to which it had been abused by being exercised against general descriptions of persons, are strongly portrayed. "Nothing is more common," Hamilton observed, "than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment by acts of the legislature. The dangerous consequences of this power are manifest. If the legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense.

"The English whigs, after the revolution, from an overweening dread of popery and the pretender, from triennial, voted the parliament septennial. They have been trying ever since to undo this false step in vain, and are repenting

the effects of their folly in the overgrown power of the new family.

“Some imprudent whigs among us, from resentment to those who have taken the opposite side, (and many of them from worse motives,) would corrupt the principles of our government, and furnish precedents for future usurpations on the rights of the community.

“Let the people beware of such counsellors. However a few designing men may rise in consequence, and advance their private interests by such expedients, the people at large are sure to be the losers in the event, whenever they suffer a departure from the rules of general and equal justice, or from the true principles of universal liberty.”

The profligacy of violating the treaty—a treaty in which Great Britain had made the most important concessions, and for which the only equivalent was a stipulation that there should be no future injury to her adherents—is then exposed. “Can we do,” he asks, “by act of the legislature what the treaty disables us from doing by due course of law? This would be to imitate the Roman general, who, having promised Antiochus to restore half his vessels, caused them to be sawed in two before their delivery; or the Plataeæ, who having promised the Thebans to restore their prisoners, had them first put to death, and returned them dead. Such fraudulent subterfuges are justly considered more odious than an open and avowed violation of treaty.”

The supremacy of congress on this subject, the dangers to result from the retaliatory acts of England by retaining the posts, and an exclusion from the fisheries, and the impolicy of measures which keep alive in the bosom of society the seeds of perpetual discord, are forcibly painted.

Motives of private advantage had been artfully held out to enlist the support of the artisans, by assuring them that to admit the tories would induce an injurious competition.



To this argument he replied, "There is a certain proportion or level in all the departments of industry. It is folly to think to raise any of them and keep them long above their natural height. By attempting to do it, the economy of the political machine is disturbed, and, till things return to their proper state, the society at large suffers. The only object of concern with an industrious artisan, as such ought to be, is, that there may be plenty of money in the community, and a brisk commerce to give it activity and circulation. All attempts at profit, through the medium of monopoly or violence, will be as fallacious as they are culpable.

"Viewing the subject in every possible light, there is not a single interest of the community but dictates moderation rather than violence. That honesty is still the best policy, that justice and moderation are the surest supports of every government, are maxims which, however they may be called trite, are at all times true; though too seldom regarded, but rarely neglected with impunity."

The pamphlet closes with the following emphatic appeal:—

"Were the people of America with one voice to ask—What shall we do to perpetuate our liberties and secure our happiness? The answer would be—GOVERN WELL, and you have nothing to fear either from internal disaffection or external hostility. Abuse not the power you possess, and you need never apprehend its diminution or loss. But if you make a wanton use of it, if you furnish another example, that despotism may debase the government of the many as well as of the few, you, like all others that have acted the same part, will experience that licentiousness is the forerunner of slavery.

"How wise was that policy of Augustus, who, after conquering his enemies, when the papers of Brutus were brought to him, which would have disclosed all his secret

associates, immediately ordered them to be burnt! He would not even know his enemies, that they might cease to hate when they had nothing to fear. How laudable was the example of Elizabeth, who, when she was transferred from the prison to the throne, fell upon her knees, and thanking Heaven for the deliverance it had granted her from her bloody persecutors, dismissed her resentment. The reigns of these two sovereigns are among the most illustrious in history. Their moderation gave a stability to their government, which nothing else could have effected. This was the secret of uniting all parties.

"These sentiments," he added, "are delivered to you in the frankness of conscious integrity, by one who *feels* that solicitude for the good of the community which the zealots whose opinions he encounters profess; by one who pursues not, as they do, the honours or emoluments of his country; by one who has had too deep a share in the common exertions of this revolution, to be willing to see its fruits blasted by the violence of rash or unprincipled men, without at least protesting against their designs; by one who, though he has had in the course of the revolution a very *confidential* share in the public councils, civil and military, and has as often, at least, met danger in the common cause as any of those who now assume to be the guardians of the public liberty, asks no other reward of his countrymen than to be heard without prejudice, for their own interest."

Soon after the publication of this pamphlet, which was extensively read in the United States and republished in London, various replies appeared, with the signatures of Gustavus, Anti-Phocionite, and others.

One more elaborate than the rest was issued under the name of Mentor, representing the inhabitants of the southern district of the state, who had remained under the control of the enemy, as aliens; and, therefore, as subject to

the complete discretion of the legislature, and wholly denying to them the protection of the treaty.

To this production, written by Isaac Ledyard, which Hamilton designated "a political novelty," he wrote an answer, entitled "Phocion's second letter, containing remarks on Mentor's reply."

In the beginning, he avowed that "whatever severity of animadversion had been indulged in his former remarks, was manifestly directed against *a very small* number of men, manifestly aiming at nothing but the acquisition of power and profit to themselves; and who, to gratify their avidity for these objects, would trample upon every thing sacred in society, and overturn the foundations of public and private security. That it was difficult for a man conscious of a firm attachment to the public weal, who sees it invaded and endangered by such men, under specious but false pretences, either to think or to speak of their conduct without indignation; and that it was equally difficult for one who, in questions that affect the community, regards principles only and not men, to look with indifference on attempts to make the great principles of social right, justice, and honour, the victims of personal animosity or party intrigue."

Having stated a few simple propositions, which embraced within their compass the principles of his argument, and having disproved by a complete and precise demonstration those of his opponents, he descanted with much force on the improper multiplication of oaths, and exposed the specious assertion, made without any limitation, that every government has a right to take precautions for its own security, and to prescribe the terms on which its rights shall be enjoyed.

"This right," he remarked, "is bounded, with respect to those who were included in the compact by its original conditions; only in admitting strangers, it may add new

ones. The rights too of a republican government are to be modified and regulated by the principles of such a government. These principles dictate that no man shall lose his rights, without a hearing and conviction before the proper tribunal ; that previous to his disfranchisement, he shall have the full benefit of the laws to make his defence ; and that his innocence shall be presumed till his guilt has been proved. These, with many other maxims never to be forgotten in any but tyrannical governments, oppose the aims of those who quarrel with the principles of Phocion."

"Among the extravagances," he observed, "with which these prolific times abound, we hear it often said that the constitution being the creature of the people, their sense with respect to any measure, if it even stand in opposition to the constitution, will sanctify and make it right. Happily for us, in this country, the position is not to be controverted that the constitution is the creature of the people ; but it does not follow that they are not bound by it, while they suffer it to continue in force ; nor does it follow, that the legislature, which is, on the other hand, a creature of the constitution, can depart from it on any presumption of the contrary sense of the people.

"The constitution is the compact made by the society at large and each individual. The society, therefore, cannot, without breach of faith and injustice, refuse to any individual a single advantage which he derives under that compact, no more than one man can refuse to perform his agreement with another.

"If the community have good reasons for abrogating the old compact, and establishing a new one, it undoubtedly has a right to do it ; but until the compact is dissolved with the same solemnity and certainty with which it was made, the society as well as individuals are bound by it.

"All the authority of the legislature is delegated to them

under the constitution ; their rights and powers are there defined ; if they exceed them, 'tis a treasonable usurpation upon the power and majesty of the people ; and by the same rule that they may take away from a single individual the rights he claims under the constitution, they may erect themselves into perpetual dictators.

“ The sense of the people, if urged in justification of the measure, must be considered as a mere pretext, for that sense cannot appear to them in a form so explicit and authoritative as the constitution under which they act ; and if it could appear with equal authority, it could only bind when it had been preceded by a declared change in the form of government. The contrary doctrine serves to undermine all those rules by which individuals can know their duties and their rights, and to convert the government into a government of will, not of laws.”

The danger of subjugation by England had been warmly urged. He exhibited her condition at large, to show that it was groundless—the king at variance with his ministers—the ministers unsupported by parliament—the lords disagreeing with the commons—the nation execrating the king, ministers, lords, and commons, all these are symptoms of a vital malady in the present state of the nation. He then adverted to another often-repeated apprehension. “ The danger from a corruption of the principles of our government is more plausible, but not more solid. It is an axiom that governments form manners, as well as manners form governments.

“ The body of the people of this state are too firmly attached to the democracy, to permit the principles of a small number to give a different tone to that spirit. *The present law of inheritance, making an equal division among the children of the parent's property*, will soon melt down those great estates, which, if they continued, might favour the power of the few. The number of the disaffected,

who are so from speculative notions of government, is small. The great majority of those who took part against us, did it from accident, from the dread of the British power, and from the influence of others to whom they had been accustomed to look up. Most of the men who had that kind of influence are already gone. The residue and their adherents must be carried along by the torrent, and with very few exceptions, if the government is mild and just, will soon come to view it with approbation and attachment. There is a bigotry in politics, as well as in religion, equally pernicious to both. The zealots of either description are ignorant of the advantage of a spirit of toleration. It is remarkable, though not extraordinary, that those characters, throughout the states, who have been principally instrumental in the revolution, are the most opposed to persecuting measures. Were it proper, I might trace the truth of this remark, from that character which has been the first in conspicuousness, through the several gradations of those, with very few exceptions, who either in the civil or military line have borne a distinguished part."

Hamilton's great characteristics were firmness and gentleness. His spirit was as bold as it was sympathizing. He hated oppression in all its forms, and resisted it in every shape. Governed by the highest principles, with them his lofty nature would admit no compromise; for he was accustomed to view infractions of them in all their remote consequences. Hence his denunciations of tyranny were universal and unsparing.

Alluding to the passing scenes, he observed, with intensest scorn—"How easy is it for men to change their principles with their situations—to be zealous advocates for the rights of the citizens when they are invaded by others, and, as soon as they have it in their power, to become the invaders themselves—to resist the encroachments of pow-

er when it is in the hands of others, and the moment they get it into their own, to make bolder strides than those they have resisted! Are such men to be sanctified with the hallowed name of patriots? Are they not rather to be branded as men who make their passions, prejudices, and interests the sole measure of their own and others' rights? The history of mankind is too full of these melancholy contradictions."

He closed with the following impressive observations :—

"Those who are at present intrusted with power in all these infant republics, hold the most sacred deposit that ever was confided to human hands. It is with governments as with individuals, first impressions and early habits give a lasting bias to the temper and character. Our governments hitherto have no habits. How important to the happiness, not of America alone, but of mankind, that they should acquire good ones! If we set out with justice, moderation, liberality, and a scrupulous regard to the constitution, the government will acquire a spirit and tone productive of permanent blessings to the community. If, on the contrary, the public councils are guided by humour, passion, and prejudice—if, from resentment to individuals or a dread of partial inconveniences, the constitution is slighted or explained away upon every frivolous pretext—the future spirit of government will be feeble, distracted, and arbitrary. The rights of the subject will be the sport of every vicissitude. There will be no settled rule of conduct, but every thing will fluctuate with the alternate prevalency of contending factions.

"The world has its eye upon America. The noble struggle we have made in the cause of liberty, has occasioned a kind of revolution in human sentiment. The influence of our example has penetrated the gloomy regions of despotism, and has pointed the way to inquiries which may shake it to its deepest foundations. Men begin to ask ev-

ery where, 'Who is this tyrant, that dares to build his greatness on our misery and degradation? What commission has he to sacrifice millions to the wanton appetites of himself and the few minions that surround his throne?'

"To ripen inquiry into action, it remains for us to justify the revolution by its fruits. If the consequences prove that we have really asserted the cause of human happiness, what may not be expected from so illustrious an example? In a greater or less degree, the world will bless and imitate.

"But if experience, in this instance, verifies the lesson long taught by the enemies of liberty—that the bulk of mankind are not fit to govern themselves—that they must have a master, and were only made for the rein and the spur—we shall then see the final triumph of despotism over liberty. The advocates of the latter must acknowledge it to be an *ignis fatuus*, and abandon the pursuit. With the greatest advantages for promoting it that ever a people had, we *shall have betrayed the cause of human nature!* Let those in whose hands it is placed, pause for a moment, and contemplate with an eye of reverence the vast trust committed to them. Let them retire into their own bosoms and examine the motives which there prevail. Let them ask themselves this solemn question—Is the sacrifice of a few mistaken or criminal individuals an object worthy of the shifts to which we are reduced to evade the constitution and our national engagements? Then let them review the arguments that have been offered with dispassionate candour, and if they even doubt the propriety of the measures they may be about to adopt, let them remember that in a doubtful case the constitution ought never to be hazarded without extreme necessity."

This glowing appeal, which repels all the allegations that Hamilton was the friend of arbitrary government—this appeal to the better sense of the people prevailed.



"The force of plain truth," as the author observed, "carried it along the stream of prejudice, and the principles it held out, gained ground in spite of the opposition of those who were either too angry or too much interested to be convinced." A bill was then depending before the assembly for putting various descriptions of persons out of the protection of the law, which Hamilton characterized "as an attempt to transfer the sceptre from the hands of government to those of individuals—to arm one part of the community against another—to enact a civil war." This bill was now abandoned, and the happiest effects were produced. The lessons of moderation and good faith which were inculcated, were soon found to be the lessons of true wisdom; and instead of looking upon the return of the tories with alarm and discontent, the reflecting part of the public admitted that their wealth would be subservient to the interests of the community, and while they acknowledged that their temporary influence might be prejudicial, were willing to confide our institutions to the irresistible current of free opinions.

These generous views extended rapidly. As the arts of peace advanced, the popular clamour gradually subsided, and the general sense of the country settled down in favour of the policy Hamilton had supported.\*

The spirit of plunder, originating with the violent and unprincipled, disappointed in its aims, now turned upon him with its fellest rancour. From that hour of honest

\* "The rising generation then just entering on the stage of action, readily imbibed those sentiments of temperate civil liberty, and of sound constitutional law, which Hamilton had so clearly taught and so eloquently inculcated. The benign influence of such doctrines, was happily felt and retained through the whole course of the generation to whom they were addressed. I speak for myself as one of that generation, that no hasty production of the press could have been more auspicious"—Chancellor Kent's Recollections

triumph, he was marked as the object of incessant calumny. The sense of defeat, rankling in the breasts of the persecuting demagogues, united with other passions, and with the facility with which vicious sentiments usually associate, soon grew into an unscrupulous and unrelenting hostility.

But this feeling did not extend far. In all civilized societies the greater part are quiescent, and, as Hamilton observed, "were either for liberal or moderate measures, or, at most, for some legislative discriminations; a few only were very violent; the most heated were the warm adherents of the governor, and the objects of his peculiar patronage." They were rewarded for their intolerance—Hamilton was proscribed for his clemency.

Of the personal animosity which his opposition to democratic tyranny had awakened, a painful instance is related. There existed at this time an evening club, composed of persons conspicuous in the prosecution of these attainders, some of whom had written in opposition to "Phocion," and who felt themselves the deserved objects of its just denunciations.

Early in an evening of this meeting, it was proposed that Hamilton should be challenged, and in case the first challenger should fall, that others should challenge him in succession. At this moment Ledyard entered the apartment, and, on hearing the proposition, broke out with loud indignation. "This, gentlemen, never can be. What? you write what you please, and because you cannot refute what he writes in reply, you form a combination to take his life. One challenges, and if he falls, another follows!" By this remonstrance the blow was suspended.

Some time after, Hamilton, who had heard of the occurrence, was dining in company with Ledyard, when he was casually addressed as Mentor. He instantly arose, and taking him by the hand, exclaimed, "Then you, my dear

sir, are the friend who saved my life." Ledyard replied, "That, you know, you once did for me."

Of his professional efforts at this time, the traces among his papers are few and of little value. The practice of reporting adjudicated cases had not obtained. Stenography was unknown in America and the vestiges of the eloquence of the men whose genius embellished the infancy of our republic, are rare and imperfect.

The recollections of a youthful contemporary\* remark Hamilton's "clear, elegant, and fluent style, and commanding manner. He never made any argument in court without displaying his habits of thinking, and resorting at once to some well-founded principle of law, and drawing his deductions logically from his premises. Law was always treated by him as a science founded on established principles. His manners were gentle, affable, and kind. He appeared to be frank, liberal, and courteous in all his professional intercourse." Referring to an important trial of this period, they state—"Hamilton, by means of his fine melodious voice and dignified deportment, his reasoning powers and persuasive address, soared above all competition; his pre-eminence was at once universally conceded."†

He continued throughout this and the succeeding year deeply engaged in his professional labours, as to which he observed—"Legislative folly had afforded so plentiful a

\* Chancellor Kent

† Chancellor Livingston was the opposite counsel. On the brief in this cause the following pleasantry is found.

*"Recipe for a good title in ejectment*

Two or three void patents.

As many old ex-parte surveys.

One or two acts of usurpation, acquiesced in for a time, but afterwards proved to be such

Half a dozen scripture allusions.

Some ghosts, fairies, elves, hobgoblins, and a quantum sufficit of eloquence "

harvest, that he had scarcely a moment to spare from the substantial business of reaping."

But his mind was never wholly withdrawn from an attention to the welfare of his fellow-citizens. The important benefits which he had anticipated from an extensive system of banking, on its true principles, have been shown at an early period of his life

Could he have succeeded in establishing a well-organized general government, this would have been effected under its powers. But his expectations had been disappointed, and it was doubtful whether the union of the states would continue. Under these circumstances he determined to introduce a local bank, under franchises to be derived from the state.

His attention appears to have been called to this subject by a friend, who, dissatisfied with the Bank of North America, proposed the establishment of a bank in New-York.

While this was in contemplation, a plan of a land bank, of which another was the ostensible parent, but Chancellor Livingston the originator, was projected, and a petition for an exclusive charter was addressed to the legislature. "I thought it necessary," Hamilton observes in a letter to his friend, "not only with a view to your project, but for the sake of the commercial interests of the state, to start an opposition to this scheme, and took occasion to point out its absurdity and inconvenience to some of the most intelligent merchants, who presently saw matters in a proper light, and began to take measures to defeat the plan.

"The chancellor had taken so much pains with the country members, that they began to be persuaded that the land bank was the true philosopher's stone, that it was to turn all their rocks and trees into gold; and there was great reason to apprehend a majority of the legislature would have adopted his views. It became necessary to

convince the projectors themselves of the impracticability of their scheme, and to countervail the impressions they had made, by a direct application to the legislature.'

To carry this plan into effect, a general meeting\* of the citizens of New-York was convened, at which McDougal presided, and half a million of dollars were subscribed.

The constitution of the Bank of New-York, framed by Hamilton, was adopted, and he was chosen one of its directors, was chairman of the committee to prepare its by-laws, and was occupied in devising a mode for receiving and paying out gold, which had been done elsewhere by weighing in quantities; a practice attended with many evils, and for which, in the absence of a national coinage, it was difficult to find a substitute.†

The abuses of the banking system of this country have rendered it an object of prejudice; but he has thought little of its infant condition, who cannot trace to these institutions the most important public benefits.

Contemporaneously with them may be remarked the introduction of those habits of punctuality, which, by giving stability to domestic, and, as a consequence, to foreign credit, were highly instrumental in raising the character of the nation and advancing its commercial prosperity. And in the same degree in which can be seen the early introduction into the different states of an enlightened system of banking on commercial principles, in the same ratio the relative advances of those states may be traced.

A letter from La Fayette of this period invites attention

\* February 26, 1784.

† The rates for the value of each foreign coin in circulation were fixed by the bank. A person was employed to regulate each piece according to the standard weight; and an allowance or deduction of three per cent. was made on each gold piece, as it exceeded or fell short of that value. To give effect to this arrangement, the chamber of commerce, on the 4th of May, 1784, adopted a regulation fixing a tariff of values

to another subject. After mentioning an intended visit to the Prussian and Austrian armies, he wrote :—"In one of your gazettes, I find an association against the slavery of negroes, which seems to be worded in such a way as to give no offence to the moderate men in the southern states. As I have ever been partial to my brethren of that colour, I wish, if you are in the society, you would move, in your own name, for my being admitted on the list."

Thus association, emanating from one previously formed in Philadelphia, was composed of individuals, of whom the most active were members of the society of Friends. At its second meeting Jay was chosen president, and a committee raised, of which Hamilton was chairman, to devise a system for effecting its objects.

Believing that the influence of such an example would be auspicious, he proposed a resolution that every member of the society should manumit his own slaves.

He never owned a slave ; but on the contrary, having learned that a domestic whom he had hired was about to be sold by her master, he immediately purchased her freedom.

Others found the theory of humanity lighter than the practice. This resolution was debated and deferred. Disgusted with the pretensions of persons who were unwilling to make so small a sacrifice, he discontinued his attendance at these meetings.

The condition of New-York at this time is summarily shown in a letter from him to a friend. "Discrimination bills, partial taxes, schemes to engross public property in the hands of those who have present power, to banish the real wealth of the state, and substitute paper bubbles, are the only dishes that suit the public palate at this time."

While the sphere of his political usefulness was limited by such counsels, Hamilton kept aloof from party contests with the secondary men, who succeeded to the great ac-

tors in the revolution; and aware that a strong necessity could alone change the unhappy tendency of the public mind, he was content to pause, and, as he beautifully observed, "to erect a temple to time, to see what would be the event of the American drama."

## CHAPTER XX.

[1783]

THE narrative of Hamilton's past life has shown the failure of the imperfect union of the states either "to provide" prospectively "for the common defence," or "to establish justice."

It is believed to be necessary to a correct view of his future life also to show, though by a digression from his immediate personal history, its utter incompetency "to promote the general welfare" by the protection of the national industry, or "to ensure domestic tranquillity," thus failing, in every essential particular, "to secure" to the American people "the blessings of liberty."

The policy to be pursued in their intercourse with other nations would, it may be supposed, early engage the attention of a people by position and habit necessarily commercial. Hence it is perceived that before the declaration of independence, congress had deliberated upon that subject.

The result of these deliberations was such as was to have been expected under their circumstances. It was a resolution to open the ports of the colonies to the world, excepting the inhabitants, productions, and vessels of Great Britain, and East India *tea*. This purpose of placing each nation on the footing of "natives," it has been seen was proposed to France, but relinquished, and that of the "most favoured nation" adopted. This was also the basis of the treaties with Sweden and the Netherlands; in the latter of which, provisions were made defining the state of block-



ade, and securing to the people of either country "an entire and perfect liberty of conscience."

But what should be the terms of intercourse with Great Britain, was the most interesting question.

Soon after Oswald had received his commission recognising this country as an independent nation, Jay prepared the plan of a treaty of commerce, which he submitted to him. This plan proposed that it should be on the footing of "natives." The proposition being announced to congress by Franklin, was referred.

Instructions were reported,\* that "in any commercial stipulations with Great Britain," the commissioners were "to endeavour to obtain a direct commerce with all parts of the British dominions and possessions, in like manner as all parts of the United States may be opened to a direct commerce of British subjects; or at least, that such direct commerce be extended to all parts of the British dominions and possessions in Europe and the West Indies;" and they were informed, "that this stipulation will be particularly expected by congress," in case the footing of natives was admitted. Their attention was again called to this subject by a letter from Adams, in which, after reminding them of the revocation of his former powers, he urged the appointment of a resident minister at London; and having referred to the injustice which would be done to him who was the first object of his country's choice, should any other be appointed, he indicates to that body the qualifications† necessary for an American foreign minister gene-

\* By Madison.

† "In the first place, he should have had an education in classical learning, and in the knowledge of general history, ancient and modern, and particularly the history of France, England, Holland, and America. He should be well versed in the principles of ethics, of the law of nature and nations, of legislation and government, of the civil Roman law, of the laws of England and the United States, of the public law of Europe, and in the letters,

rally, and above all, to the court of St. James." This remarkable despatch was referred to a committee of which Hamilton was chairman. His views on this subject had

memoirs, and histories of those great men who have heretofore shone in the diplomatic order, and conducted the affairs of nations and the world. He should be of an age to possess a maturity of judgment arising from experience in business. He should be active, attentive, and industrious, and above all, he should possess an upright heart, and an independent spirit, and should be one who decidedly makes the interest of his country—not the policy of any other nation, nor his own private ambition or interest, or those of his family, friends, and connections—the rule of his conduct.

"We hear so much said about a genteel address, and a facility in speaking the French language, that one would think a dancing master and a French master the only tutors necessary to educate a statesman. Be it remembered, the present revolution, neither in America nor Europe has been accomplished by elegant bows, nor by fluency in French, nor will any great thing ever be effected by such accomplishments alone. A man must have something in his head to say before he can speak to effect, how ready soever he may be at utterance. And if the knowledge is in his head and the virtue in his heart, he will never fail to find a way of communicating his sentiments to good purpose. He will always have excellent translators ready, if he wants them, to turn his thoughts into any language he desires.

"As to what is called a fine address, it is seldom attended to after a first or second conversation, and even in these it is regarded no more by men of sense of any country than another thing, which I heard disputed with great vivacity among the officers of the French frigate, the *SENSIBLE*. The question was, what were the several departments of an ambassador and a secretary of legation. After a long and shrewd discussion, it was decided by a majority of votes, 'that the secretary's part was to do the business, and that of an ambassador \* \* \* \* \*.' This decision produced a laugh among the company, and no ideas of the kind will ever produce any thing else among men of understanding.

"It is very true that it is possible that a case may happen, that a man may serve his country by a bribe well placed, or an intrigue \* \* \* \*

\* \* But it is equally true, that a man's country will be sold and betrayed a thousand times by this infamous commerce, where it will be once served. It is very certain that we shall never be a match for European statesmen in such accomplishments for negotiation, any more than, I must and will add, they will equal us in any solid abilities, virtues, and application to business, if we choose wisely among the excellent characters with which our country abounds."—7 D. C. 21.

long been formed ; he was of the opinion that it ought to be "the basis of our commercial system not to make particular sacrifices, nor to expect particular favours." Though the advocate of a reciprocal freedom of commerce, it has been seen that he was fully sensible of the importance of the power of protecting the peculiar interests of a community where, from the previous colonial restrictions, there was little diversity in the pursuits of industry.

But the powers of the confederacy were inadequate to this object, the policy of England was not developed, and, until those powers were enlarged and that policy disclosed, he felt that a temporary arrangement would be most expedient.

Under this conviction, and not satisfied by the despatch from Adams, of the wisdom of intrusting to him the sole conduct of so important a negotiation, he reported a resolution\* that Franklin and Jay should be empowered with him, or either of them in the absence of the others, "to enter into a treaty of commerce between the United States of America and Great Britain, subject to the revisal of the contracting parties previous to its final conclusion ; and in the mean time, to enter into a commercial convention to continue in force one year," and "that the secretary for foreign affairs should lay before congress, without delay," a plan of a treaty of commerce, and instructions to be transmitted to the commissioners.

This plan proposed a direct commerce with Great Britain, except as to such articles, the importation or exportation of which might be prohibited in all her dominions, excepting the territories of the East India and Hudson's Bay companies ; the subjects of Great Britain paying the same duties in the United States as the citizens of the

\* May 1, 1783

United States paid in Great Britain, and which were not to exceed those paid by the most favoured nations,—participating in any concession freely, if freely made, or if conditional, allowing a similar compensation. In neither country were the citizens or subjects of the other to be regarded as aliens, except as to an exemption from military duty.

The plan\* being referred on the nineteenth of June, instructions were reported to accompany it. They strongly urged the articles as to a free commerce, on the ground that the immunities offered to British subjects, particularly those permitted to settle in the United States, were a full equivalent, as they would probably direct their trade into such channels as England would prefer. If these terms could not be obtained, others as similar to them as possible were to be obtained, and they were directed “to bear in mind that the great leading object of these states, was to find the West India market open for their own produce, and to be permitted, as far as possible,

\* Madison to Jefferson, May 13, 1783.—“A project for a treaty of commerce with Great Britam has been reported by the secretary of foreign affairs, and is now in the hands of a committee. The objects most at heart, are—first, a direct trade between this country and the West Indies, secondly, a right of carrying between the latter and other parts of the British empire, thurdly, a right of carrying from the West Indies to all other parts of the world. As the price of these advantages, it is proposed that we shall admit British subjects to equal privileges with our own citizens. As to the first object, it may be observed, that the bill lately brought into the British parliament, renders it probable that it may be obtained without such a cession, as to the second, that it *concerns the eastern states chiefly*, and that as to the thurd, *that it concerns them alone*. Whilst the privilege to be conceded, will chiefly, if not alone, affect the southern states. The interest of these, seems to require that they should retain, at least the faculty of giving any encouragement to their own merchant-ships or mariners, which may be necessary to prevent a relapse under Scotch monopoly, or to acquire a maritime importance. The eastern states need no such precaution”—Madison Papers, vol. 1, p 531.

to be the carriers of theirs." The trade of the coast of Africa, and permission to cut wood in the bay of Honduras, were indicated as desirable. They were to represent as inducements to the grant of these advantages, that unless these channels were opened to America, she would be without the means of paying for the manufactures required, and be compelled to manufacture for herself. But if a market was given for her raw materials, agriculture, and not manufactures, would be encouraged. They were in no event to conclude any treaty, unless the trade with the West Indies was placed on its former footing. It was not to be definitive until approved by congress, but a convention on these principles might be entered into, to endure one year.

The expediency of making an admission to the West India market an indispensable condition, was doubted. It was still "a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly."\* That a nation so fenced in by monopolies, and which then considered it as a cardinal maxim to secure to herself the exclusive trade of her colonies, would relax in favour of the United States, so recently revolted, was little to be expected. Indeed, the people of this country did not, at the beginning of the revolution, expect it. In the address of congress to the inhabitants of Great Britain, made in seventeen hundred and seventy-five, they declared, "We cheerfully consent to such acts of the British parliament as shall be restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefit of it to its respective members."

Under these considerations, and unwilling to interpose

\* Montesquieu, liv 21, cap. 17.

so serious an impediment to a treaty, and, on the part of some, to recognise the policy that America was to continue a merely agricultural nation, this resolution was postponed. In the ensuing month,\* the minister of France anxious to secure to his country a monopoly of the American trade, announced to congress that he would not sign a treaty but in concert with the United States, and at the same time condemned "the too precipitate admission of British vessels into the American ports."

The statesmen of England had, in the mean time, also been occupied with this subject. It has been seen, that while the party which plunged their country into this disastrous conflict—still clinging to the hope of recovering their popularity, by soothing the pride of the nation, and obedient to the prejudices of the monarch—shrank from the express acknowledgment of independence, their opponents, during the brief ascendancy of Fox, whose enlightened mind was governed by an enlarged philanthropy, took a different view.

He contended that it became the British government to tender an absolute, unconditional acknowledgment of independence in the first instance, as a measure not less due to her national character, than prompted by her best interests. Similar difference of opinion existed as to the policy which ought to govern the commercial relations of the two countries. The advocates of unconditional terms, as soon as the provisional treaty was completed, proposed in parliament to repeal all the existing prohibitory acts, and recommended an open trade with the United States. On the third of March, seventeen hundred and eighty-three, a bill was presented by Pitt, who had just commenced his distinguished career, framed "on the most enlarged principles of reciprocal benefit," to operate until a treaty should

\* July 21, 1783.

be formed. This bill would have placed the American commerce, both in the direct and colonial trade, on the same terms with that of England. These liberal views were also approved by a large party of the merchants. But the bill was opposed, in every stage of it, by the navigating interest, as an infraction of existing treaties ; as a violation of the policy of the navigation act, which, it was contended, by the terms of the settlement with Ireland, would have been wholly repealed, as respected that kingdom, if repealed in any particular affecting England ; as a measure unequal in its operation on different parts of the empire, and not warranted by the spirit of the treaty between the United States and France. It was the appeal of established opinions to national prejudices ; an appeal rarely unsuccessful. Great diversity of opinion also arose as to the extent to which it would be prudent to open the commerce of the West Indies, and while the discussion was pending, a coalition was formed between North and Fox. They succeeded to power ; the influence of the king predominated, Pitt's bill failed, and the crown was authorized to make temporary regulations

The policy of these regulations was obviously to monopolize the navigation. In the direct trade between the West Indies and England, the tropical products were bulky, and required a large tonnage. The wants of the islands only gave small outward freights. It was intended to supply these by the carriage to the United States, thence to the West Indies, and from the West Indies, by a return cargo, to the mother country.

The course of the negotiations on the part of England partook of the fluctuations in her councils. Not long after the signature of the preliminary articles, the king of England *instructed* Hartley to negotiate a treaty of commerce with the United States. This informality was objected to, and he was subsequently duly commis-

sioned. A proposition\* for a temporary convention, authorizing a mutual intercourse on the footing of "*natives*," was made on behalf of this country. England declined assenting to it. Hartley then offered to place the trade of the two countries on the same basis as that upon which it had existed before the war; but excluding American citizens from a direct intercourse between the British West Indies and the mother country. This also proved to be unauthorized, and no further instructions were given.

The British ministry, acting on the power of regulation recently conferred upon them, issued two proclamations; the first of which restrained the importation of the produce of the United States to British vessels, navigated according to her laws, or to vessels belonging to the state of which the cargo was the produce;† and the other, in effect, absolutely prohibited American vessels or citizens from trading to the British colonies. Convinced that no advantage could be derived from longer delay, the definitive treaty of peace, which was a copy of the provisional articles, was signed on the third of September, seventeen hundred and eighty-three.

Soon after this event, copies of the recent proclamations were received by congress from their ministers, who announced propositions for entering into treaties by several leading European powers.

The conduct of England was supposed to indicate the importance of such treaties, and instructions were passed, declaring the principle on which these negotiations should be commenced. They were to have for their basis the mutual advantage of the contracting parties, on terms of equality and reciprocity, and not to be repugnant to their

\*The article submitted by Jay proposed to exclude the importation of slaves.

†Several staples of the United States were also excluded, even in British bottoms.



existing treaties. The report of June, as to the terms of a treaty with Great Britain, was thus superseded.

These resolutions passed on the twenty-ninth of October, seventeen hundred and eighty-three.

On the third of November a new congress met at Princeton, when seven states being represented, a president was chosen. After a session of two days, it adjourned to meet at Annapolis, on the twenty-sixth day of the same month ; but a quorum was not formed until the thirteenth of December, on which day nine states were represented. From the same cause, so rapidly had that body declined in the public estimation, notwithstanding a call upon the states urging the necessity of ratifying the definitive treaty, a full meeting was not had until the fourteenth of January, when that treaty was unanimously ratified, and a resolution was adopted recommending the restitution of confiscated property.

A provision for the interest on a part of the debt was brought under consideration on the following day, by a memorial from the holders of loan-office certificates, when a declaratory resolution was adopted, that they were not subject to depreciation. A representation by the foreign officers, not attached to the state lines, of the hardships incurred by them from being paid in depreciated paper, was soon after made to congress, and directions were given to the superintendent of finance, to pay them such sums, *on account of their pay*, as would relieve them from their embarrassments, and enable them to return to Europe. With the exception of the acceptance from Virginia of a cession of her western territory,\* nothing

\* The deed of cession contained this provision—"That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a *common fund*, for the use and benefit of such of the United States, as have be-

of moment, owing to the continued remissness of the delegates, was done until the month of April, when the grand committee, of which Jefferson was chairman, presented a report on the finances. This document—after exhibiting an account for the interest on the debt, and the current services of the year seventeen hundred and eighty-four, of five millions four hundred and eighty thousand dollars, and referring to the resolutions of the last congress for the establishment of an impost, the delay of which rendered other measures necessary for the discharge of the debt—proceeded to represent, that as to twelve hundred thousand dollars of interest, it was not embraced in the account, because as the requisition of seventeen hundred and eighty-two had given license to the states to apply the requisite part of their quotas to the payment of interest on the loan office, and other liquidated debts of the United States, they *supposed* that the “actual payment of these quotas had been uncommunicated to the office of finance” It then urged, that the United States should communicate to that office the amount paid, and hasten the collection of the residue. It next inquired, whether any surpluses remained of former requisitions; and in this inquiry, proceeding on the ground that for part of those requisitions certificates were received, which were transferred to the fund proposed to be raised by the impost, the result was arrived at, that a surplus remained exceeding five and a half millions of dollars, which surplus it was proposed to apply to the existing demands; in order to prevent any new requisitions, not a sum equivalent to these demands,

come or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their several respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for *that purpose* and for *no other use or purpose whatsoever.*” This deed was executed, March 1, 1784, by Jefferson, Lee, Hardy, and Monroe.

but from a regard to the "exhausted state of the country," three-fourths of it.

The "abler states" were then "encouraged" to contribute as much more as was practicable, to be applied to the payment of the interest and principal of the debt, and to be credited in future requisitions; and an assurance was given, that before any further demands should be made, a revision of the quotas of the states would be had.

By this scheme, the amount to be required was reduced to about four and a half millions. To give further facilities to the states, it was proposed, that one half of this sum should be called for in money; that the other moiety, being the interest on the domestic debt, should be met by discounts of interest with the domestic creditors, for which, transferable certificates were to be issued, receivable in lieu of money. A proposition of McHenry, to refer this report to the superintendent of finance, was negatived, and on a subsequent day, a motion was made by Jefferson to reduce the amount to be collected from three-fourths to *one half* of the original sum, which, though defeated on the first vote, prevailed after protracted and frequent debates.

This report was ultimately adopted; and although it had admitted that nearly five millions and a half were necessary for the current service, the amount required by it was reduced to a little more than two and a half millions of dollars, a measure that left a large sum of interest unprovided for, which was raised by the succeeding congress. This was a complex affair. By preventing collisions as to the respective quotas of the states, and by imposing upon a future congress the irksome office of demanding increased contributions, it was better adapted to secure a temporary popularity, and to subserve personal

objects, than to discharge the public engagements, or to promote the public welfare.\*

The refusal to refer this report to the superintendent of finance, is indicative of the relations between that officer and this congress. He soon after resigned his office, and his powers were consigned to a new board of treasury.

While this subject had in part occupied their attention, a plan† was discussed for the government of the western territory, and principles were established on which, when sufficiently peopled, it should be formed into subdivisions, to be admitted as members of the confederacy. The re-

\* In a letter from Rufus King, a delegate in the succeeding congress, to Gerry, it is observed "The recommendation of the twenty-seventh April, seventeen hundred and eighty-four, is the source of great embarrassment Congress thereby declare, that they will not call for further moneys until the states have all paid up former deficiencies; and they engage to credit advances over the moiety of the eight millions of dollars in the next requisition The recommendation of last year, which is a very complex affair, also states, that before the residue of the eight and two millions of dollars, not thereby called for, should be required, congress would revise the rule of apportionment, and make it conformable to justice, upon the best evidence in their power at the time. South Carolina, in the apportionment of the eight millions, stands at the same sum as New-Hampshire Revise the rule, and conform it to justice, and South Carolina will stand at a larger sum, and other states at a less. This is what I contend for, and if it succeeds, we shall bring in South Carolina Indeed, it may be questionable whether we ought not to reconsider the recommendation of last year on this subject, and to enjoin it upon the states to comply with the expectations of congress, in paying a moiety of the quotas of the eight millions last year required, and make a new requisition for the moneys necessary for the present year, without reference to former requisitions It will be the occasion of confusion and intricacy, if every new requisition upon the states for money is to operate as a *balance-bill* to all preceding demands"

† Jefferson's plan, dated March 1st, 1784, proposed that each state should comprehend two degrees of latitude, divided by north and south parallels, and that they should be named Sylvania, Michigania, Chersonesus, Assinipia, Metropotamia, Illinois, Saratoga, Washington, Polypotamia, Pelisipia, and should become states as soon as each contained 40,000 souls.

port was from Jefferson, Chase, and Howell. It is to be remarked, that it embodied a proviso for the exclusion of slavery in the contemplated states, after the commencement of the nineteenth century, which, though sustained by the votes of all (but the southern states,) and by those of Jefferson and Williamson, was expunged. This report is a remarkable event in the history of its author. It contemplated an exercise of the highest powers of government; nothing less than the creation of independent states; their admission as members of the confederacy, and the determination of the conditions of such admission. But it was an exercise of powers not delegated to the confederation! "All this was done without the *least colour* of constitutional authority; yet no blame was whispered, no alarm sounded. The public interest, the necessity of the case, *imposed* upon congress the task of overleaping their constitutional authority."\*

It has been previously mentioned that Jefferson had repaired to Philadelphia the preceding year, with a view to his embarkation as a joint commissioner in the negotiation at Paris. He was appointed† on motion of Madison, it being suggested that a recent domestic calamity had probably changed his sentiments with regard to public life; that "all the reasons for his original appointment still existed, and had acquired additional force from the improbability that Laurens would actually assist in the negotiation."‡ The intelligence from Europe led to a resolution, that he must "not proceed on his intended voyage until further instructions." Though he hoped there was no prospect of his having any thing more to do than to join in the celebration of peace, he remained near the seat

\* Such was the charge, and such the defence.—Federalist, No. 38, by Madison

† November 12, 1782

‡ February 14, 1783.

of congress, "much agitated with the suspense\* in which he was held, until the first of April, when Hamilton reported,† "that the object of his appointment was so far advanced as to render his services no longer necessary."

A mission to Europe was still his favourite aim, and no more certain mode of obtaining it offered, than a seat in congress.

The events of the last year had shown that every effort to conclude a commercial treaty with Great Britain, had been vain, and if France could have been previously induced to adopt a more liberal policy, the negotiations for the treaty of peace had dispelled every hope of that kind. The previous congress had, in conformity with Hamilton's views, dissuaded a multiplication of pacts with foreign nations, until the confederacy should have been invested with an efficient control over its members, and until time and experience should have indicated what system of regulations would best promote the permanent interests of the United States. But the recent overtures were to be met, and when the field of ambition was so circumscribed at home, nothing could be more attractive than the position of determining the foreign relations of this youthful empire; nor more enchanting to a visionary mind, than the attempt to overturn at once the prevailing maxims of European diplomacy, and to substitute an universal system of

\* December 30, 1782—"Mr. Jefferson arrived here on Friday last, and is industriously *arming* himself for the *field of negotiation*. The commission issued to Mr. Oswald impresses him with a hope that he may have *nothing to do* on his arrival, but join in the celebration of victory and peace. Congress, however, anxiously espouse the expediency of his hastening to his destination."

March 11, 1783—"Mr. Jefferson is still here, *agitated*, as you may suppose, *with the suspense in which he is kept*. He is anxious as myself for your going into the legislature"—Madison to Edmund Randolph, vol. 1, 495-514

† Vol 1, No 25, department of state

free trade. The mode adopted to obtain this object was as certain to result in failure, as the object was at that time hopeless. It was a novel idea, and had an imposing air, to establish a central commission at Paris, whither the nations of Europe might resort, to ask a participation in the commerce of the new world. Should the dignity of Britain scorn, or the pride of Spain revolt at the idea of negotiating under the supervision of France, yet still it would be a happy thing to escape the turmoils of a jarring confederacy, to withdraw from the sufferings of a recent war, and to enjoy the only official emoluments, ease and honour, which the penury of the people could support. To others was left the labour of building up the constitution of the country.

Jefferson introduced a report on the foreign relations. After reciting the advantages to be derived from treaties with the various nations of Europe, he proposed that each treaty should contain a stipulation that each party should have the right to carry their own produce, manufactures, and merchandise, in their own bottoms to the ports of the other, and thence to take the produce and manufactures of the other, paying such duties only as are paid by the most favoured nation,—freely, where freely granted to such nation, and paying the compensation where such nation does the same. “That with nations holding possessions in America, a direct and similar intercourse be admitted between the United States and such possessions; or if that could not be obtained, a direct and similar intercourse between the United States and certain free ports within such possessions. If neither of these—permission to bring, in their own bottoms, their produce and merchandise to the United States directly, and similar permission to the United States as to their produce and vessels; or else, a permission to the inhabitants of such possessions to carry their produce and merchandise

in their own bottoms to the free ports of other nations ; and thence to take back, directly, the produce and merchandise of the United States ; and that in all such treaties, the United States should be regarded as one nation, upon the principles of the federal constitution." Provisions that free ships should make free goods, defining articles of contraband and the state of blockade, were also to be made ; with the additional stipulation, that a contraband trade should not induce confiscation.

Security was also to be assured to persons following the peaceful arts ; and a stipulation that private ships should continue their trade free and unmolested during war, and that privateers should not be employed, was proposed. Aliens were to be excluded holding real estate within the United States, as "utterly inadmissible by their several laws and policy ;" but in case they did, it was not on their demise to escheat, but might be sold for the benefit of their representatives. All treaties were to be limited to ten years, unless the foreign party "pertinaciously insisted" on their being extended to fifteen years. On the discussion of the leading principles of these instructions, placing each nation on the footing of the most favoured, a substitute was offered to establish the intercourse on the basis of "natives ;" but if this could not be obtained, then on that of "the most favoured nation." This amendment was lost on the vote by states, though of the members present, a majority were in favour of it.\* It was also contended that a distinction ought to be made between British and American vessels by a difference of duties. If not then made, that it was at least important to reserve the power of making such a discrimination in case pecu-

\* Affirmative—Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, (three to two,) Jefferson and Monroe in the negative. Negative—New-Hampshire and New-Jersey. Divided—Rhode Island, New-York, North and South Carolina.



liar circumstances should render its exercise necessary. Owing to these differences of opinion, it was moved to postpone acting upon this report until the disposition and concurrence of the several state legislatures should be ascertained, which, the motion stated, "the constitution renders highly prudent, if not indispensably necessary in forming commercial treaties."

With this motion a resolution was offered directing foreign powers to be apprised of the desire of the United States "to form treaties upon terms of perfect reciprocity and equality; and for that purpose were ready to enter into negotiations in *America*." Five commissioners had been appointed to negotiate the treaty with England, thus representing each important section of the union. To gain the benefit of this precedent, it had been proposed to appoint two additional commissioners. One of the objects of this resolution was, to prevent so unnecessary an increase of the number of foreign ministers. But it was defeated, and the report of Jefferson was recommitted. Another report had recently been made proposing a reduction of the civil list. It was next moved to postpone these appointments for the purpose of considering this report. The division of states being equal, this motion was also lost.\* The idea of two additional commissioners was then abandoned, and it was moved to add one to the existing number.

This proposal was resisted, and in lieu of it a declaratory resolution was offered, "that the interests of the United States do not require more than three commissioners plenipotentiary to be supported in Europe to negotiate treaties of commerce." This declaration would have defeated Jefferson, and at the instance of Virginia it was superseded by the previous question. A debate next arose

\* 4 J C. 396-7.

on a proposal to reduce the salaries of these ministers,\* which prevailed. To prevent this reduction, a member from Virginia insisted that it was a proposition which required the assent of nine states. This extraordinary objection was defeated, only five members voting for it; but the next day, at the instance of Gerry, the salary was established at nine thousand dollars.

Jefferson had recommended a delusive provision for the public creditors, and had urged "forbearance," on the ground "that the states were just relieved from the ravages of predatory armies, returning from an attendance in camps to the culture of their fields; beginning to sow, but not yet having reaped; exhausted of necessaries and habitual comforts, and therefore needing new supplies out of the first proceeds of their labour." He was also of the committee which had recommended retrenchments in the public expenditure, and which did not contemplate in their report this additional officer.

Under these circumstances, the appointment of an unnecessary commissioner was viewed as proceeding solely from a desire to bestow office on an individual, by a body of which he was a member, without any regard to the condition of the country. It gave rise to much dissatisfaction. At this moment a letter was received from Franklin, announcing that Jay had determined to embark for America. The motive to an increase of the number of the commission now ceased, and the measure was abandoned.

The office of secretary of foreign affairs was vacant. Jay, in his late mission, had confirmed the confidence of the nation. His appointment to that department would satisfy the public, and propitiate those who were offended with this gross and glaring effort to provide for a favour-

\* From \$11,000 to \$8,000 ,

ite. The dissatisfaction given by Jay to the partisans of France was therefore smothered, and yielded to the present object, and on the same day, the seventh of May, Jay in his absence, at the instance of Gerry, was elected to the foreign department, and with his concurrence Jefferson, on the motion of a colleague from Virginia, was chosen to fill the vacancy in the commission.

An occurrence of this kind could not fail to produce a strong and lasting impression. A twelvemonth after, Massachusetts urged, through her delegates, a resolution that no member of congress should be appointed to any office during the term for which he was elected; and a provision was inserted in the federal constitution, which would seem to have had this case in view. It rendered a member of congress ineligible "to any civil office that had *been created*, or the *emolument* whereof had been *increased*, during the time for which he was elected."

Jefferson's commercial report was now again brought forward with some additions. Of these, the most important was, that these instructions should be considered as supplementary to those of October, seventeen hundred and eighty-three; that where the commissioners should be able to form treaties on principles in their judgment more advantageous to the United States than those of the report, they were permitted to adopt such principles, and that it would be agreeable to have supplementary treaties with France, Holland, and Sweden, which may bring the treaties previously entered into, as nearly as may be to the principles now directed.

Numerous exceptions were taken to a treaty framed on the principle of these instructions, in a report\* subsequently made to congress by the secretary of foreign affairs. These are to be regarded, not as exceptions to stipulations

\* Report of Jay — 2 D C. 234.

of the most perfect equality and reciprocity in a particular treaty with any one nation, where the interest of the country might dictate them, but as exceptions to the establishment, at that time, of a general system of policy, excluding all discriminations or prohibitions, however their necessity might be indicated by peculiar circumstances. Jay thought that a system for regulating the trade of the United States should be framed and adopted before they entered into further treaties of commerce. Various reasons were given to show that it was inexpedient to make the conduct of the parties towards the most favoured nations, the rule of their conduct towards each other; among these, a principal one was, that the interchange of favours between the United States and a nation merely *European*, would probably be regulated by principles and considerations distinct, in a certain degree, from those which should regulate such an interchange between them and nations partly European and partly American.\* There might, he said, exist reasons for freely granting to one nation what there might be no reason for granting to another. He also doubted the expediency of agreeing absolutely that any nation should be at liberty to bring and vend into the United States, all or any of their productions and manufactures *without exception*, because it might be necessary to prohibit the importation of some of them, either to check luxury, or to promote domestic manufactures †

\* "We abstained," Jefferson observed, "from making new propositions to others having no colonies, because our commerce being an exchange of raw for wrought materials, is a competent price for admission into the colonies of those possessing them, but were we to give it without price to others, all would claim it without price, on the ordinary ground of *gentis amicitiam*."—Jefferson's Works, vol 1, p 51.

† In the treaty which was the immediate subject of this report, one article precluded the laying an embargo. This was objected to, for a reason not easily disputed.

But one other topic of moment arrests attention in the proceedings of this congress. It related to the garrisoning of the frontier posts. The hostility evinced by New-York to the employment of continental troops for that purpose, has been previously mentioned. The expectation that the negotiation which was pending for the surrender of those posts would be successful, produced great anxiety in the councils of that state, and she urged, with extreme earnestness and pertinacity, a declaration by congress, in pursuance of the articles of confederation, of the number of troops necessary to be kept up by her for the protection of her frontier. This subject, though frequently presented to that body, was deferred from an apprehension of authorizing an individual state to maintain an armed force. To avoid this alternative, propositions were made in congress for the enlistment of a thousand men, to protect the commissioners recently appointed to hold treaties with the Indians, and to defend the frontiers.

The fate of these propositions is indicative of the temper of the times. After repeated and laboured debates, a resolution was introduced by Gerry, proclaiming "the danger of confiding to a body, which was already empowered to make foreign and domestic loans, and to issue bills of credit, that of raising standing armies;" and it was determined to discharge the few troops which had been retained in the service of the United States. The standing army was reduced to eighty men. No officer was retained of a higher rank than captain, and the western frontiers were to be protected by a requisition for a regiment of militia. The congress of the United States having, in virtue of the confederation, at the instance of Jefferson, chosen from its own body a "committee of the states," now adjourned.

This committee continued in session, though without effecting any thing, until the nineteenth of August, seven-

teen hundred and eighty-four, when some of the members withdrawing, without the consent of their colleagues, it broke up, without the decency of an adjournment, in clamorous confusion, leaving the nation without any representative council.

The congressional year of their successors commenced on the first of November, of the same year, but a quorum was not formed until the succeeding month. Its history is alike barren of interest; the few subjects upon which it acted, until the latter part of its session, being the organization of a court to adjudicate upon the territorial controversy which existed between the states of Massachusetts and New-York; measures for the adjustment of a similar dispute between South Carolina and Georgia; the appointment of commissioners to treat with the southwestern tribes of Indians; the selection of a site for a federal city, and an ordinance defining the power and duties of the secretary at war. These being arranged, a decision was made upon a matter of permanent importance—the mode of disposing of the western territory. Much discussion on this subject had occurred during the previous congress. An ordinance was now passed, “the result of compromise, not such as was desired, produced by the utmost efforts of public argument and private *solicitation*.”\*

A provision for the current service gave rise also to frequent deliberations, which were concluded by a vote on the report of the grand committee of congress, a short time before the termination of its political existence. By this vote a requisition was made upon the states for three millions of dollars, of which two-thirds were receivable in

\* From a letter of William S. Johnson, a man of a probity and talent as eminent, and views as comprehensive, as were those of his distinguished father.

certificates for interest on the liquidated debts ; which amount was intended, not only to meet the demands of the year, but also the balance of the estimate which the preceding congress had omitted to require. An earnest recommendation was also made for the completion of the measures for raising revenue, proposed in seventeen hundred and eighty-three, "as preferable to any other system, and necessary to the establishment of the public credit."

Jefferson meanwhile had proceeded to Paris, intent upon his project "to emancipate commerce." The joint commission was opened with much solemnity on the thirteenth of August, 1784, and soon after its powers were announced to the different governments of Europe—France, Great Britain, Denmark, Germany, Prussia, Sweden, Spain, Portugal, Russia, Saxony, the Sicilies, Sardinia, Tuscany, Genoa, Venice, Morocco, Algiers, Tripoli, Tunis, the sublime porte, and his holiness the Pope !

France received them with a smile, England silenced the experiment by an inquiry as to "the real nature of the powers with which they were invested, whether they were *merely* commissioned by congress, or had received separate powers from the respective states." The other nations stood aloof. Prussia alone formed a treaty embracing some of the principles of the report, but insisted upon reserving the right of prohibition and retaliation—rights which the American commissioners themselves claimed to reserve in their negotiations with Tuscany ! The commission, thus baffled in all its expectations, ceased to act.\*

The introduction of a new power into the great family

\* Jefferson relates—"Denmark and Tuscany entered also into negotiations with us ; other powers appearing indifferent, we did not think it proper to press them. The negotiations, begun with Denmark and Tuscany, were protracted designedly, until our powers had expired."—Jefferson's Works, v 1, p 51. The details of this commission may be found in the six reports to congress, with the accompanying correspondence.—2 D. C. 193 to 347.

of nations, would seem to have been an event fraught with the most important and immediate interest to the civilized world, and an American might have hoped to have seen her vast prospective greatness attracting the eyes of Europe, and commanding all its attention. But the impotence of the confederacy and the visionary objects of this commission defeated those hopes. From these causes a larger view of our foreign relations would seem unnecessary, were it not for the powerful influence which the policy of the great leading powers produced on the social condition of the American states.

Those with France, their ancient ally, first attract attention. Nothing is more obvious in all her policy than the sagacity of her statesmen, who foresaw that the moment her political influence over the confederacy ceased, every other connection would become a minor consideration. Hence her solicitude that all the American negotiations should be conducted near her court. But England and Spain were both unwilling that Paris should be the centre of political action. Great Britain insisted as a previous condition to any negotiation an embassy to London, "as more suitable to the dignity of either power." The Spanish minister declared, that in matters between its crown and any other power, "the custom of its court (the most regular and systematic of all others) was to negotiate between themselves, without availing themselves of a third place." Franklin having resigned his seat in the commission, Adams, in consequence of these intimations, was accredited to the court of St. James; Jefferson to that of Versailles; and Spain appointed a sort of intermediate minister—a "plenipotentiary chargé d'affaires," to reside at the seat of congress.

While the force of habit formed during her colonial relations, similarity of language, laws, and manners, all attracted the American people to England, other causes



operated' as insuperable obstacles to an extensive commerce between the United States and France.

The poverty of the American people denied to them the luxuries of their ally. The inferior fabric and peculiar fashion of articles of primary necessity, prevented their being introduced into general use. For those which were sought, few American products would be received in exchange; while the commercial system of France, yet in its infancy, charged the objects of commerce with such a multiplicity of duties, and those so oppressive as to deter enterprise. The principal article of exchange was the subject of a monopoly, and charged with a duty to the crown, of too much value to be relinquished by a needy monarch.\* On other articles accumulated duties were levied, and these were partitioned among so many recipients, as placed it beyond the power of the financier to reduce them to one denomination; while the political influence of the beneficiaries would not permit them to be diminished or suppressed. These were some of the embarrassments to a direct trade. The colonial trade had been long conducted under a most rigid system, and as the treaty of seventeen hundred and seventy-eight had secured to France the free admission of her manufactures into the United States, they had nothing to offer in the shape of immunities to open the sealed commerce of her islands.†

Soon after his return to Europe, La Fayette, at whose

\* Tobacco yielded twenty-eight millions. It constituted one-third of the whole exports of the United States prior to the revolution.

† Compelled by necessity, France opened her colonial ports during the war, but at its close, by an arret, dated thirtieth of August, seventeen hundred and eighty-four, she permitted the importation into them only of a few articles of primary necessity, and confined the exports to rum, molasses, and goods brought from France, which paid the local duties with an advalorem of one per cent. A discriminating duty was also imposed on salted beef and dried fish, to form a fund for the encouragement of the French fisheries.

instance the free ports stipulated in the treaty of seventeen hundred and seventy-eight were designated, made strong representations to his court of the benefits to be anticipated from enlarging the commercial intercourse of the two countries. The representations were renewed by Jefferson often and with much detail, but the progress of the negotiation was slow—indicative of the altered temper of Veigennes, from his failure to control the definitive treaty with England—and attended with circumstances not a little wounding to American pride.

The first letter addressed to that minister received no other answer than that it had been transmitted to the comptroller-general. To subsequent communications it was replied, "that not a sufficient dependence could be placed on arrangements taken with us;" and an act of one of the states, by which a discrimination of duties was made between natives and foreigners, became the subject of a letter from the premier, which, after reproaching the American minister with a disregard of reciprocity in our navigation laws and commercial regulations, closed with a threat, "that the king will be under the necessity, contrary to his wishes, to fall upon such means as will tend to put matters upon a perfect equality."\*

These complaints were referred to the secretary of foreign affairs, whose report admitted that the French merchants enjoyed fewer privileges than the merchants of the United States did in France, and that the act of Massachusetts "had deviated both from the letter and spirit of the treaty."† While the impotence of the confederation thus subjected it to the just reproach of a breach of faith towards their ally, it also gave rise to reclamations for individual claims, the justice whereof could not be denied, and which there were no means to discharge. The disappoint-

ments that followed produced great irritation among the French residents in the United States, which extended to her legation, and drew from them remonstrances, wherein the respect due to an independent government was often forgotten.

In vain did congress renew their assurances of eventual payment, founded on the good faith of the states. Discriminations in the provision for the interest on their debts, from which provision foreigners were expressly excluded by some of the states, were pointed out, and the very ground on which the delay of justice was excused, the inability to compel the collection of taxes, gave rise to the taunting inquiry, "Is there one, or are there eleven republics?"

It being a leading maxim in Jefferson's politics "to multiply the points of contact and connection" with France, it will be seen, that he used every means to promote intercourse with a people whose habits, manners, tastes, and morals he admired.

The insufficient provision for the interest and instalments then due of the debt to France, led to a proposition to purchase it. The terms of this proposition are found in the secret journal of congress of the second of October, seventeen hundred and eighty-seven, giving an extract of a letter from Jefferson to the secretary of foreign affairs:—"That a proposition has been made to Monsieur de Calonne, minister of the finances of France, by a company of Dutch merchants, to purchase the debt due from the United States to the crown of France; giving for the said debt, amounting to twenty-four millions of livres, the sum of twenty millions of livres. That information of this proposition has been given to him by the agent of the said company, with the view of ascertaining whether the proposed negotiation would be agreeable to congress. That the said minister suggests, *'that if there is a danger*

*of the public payments not being punctual, whether it might not be better that the discontents which would then arise, should be transferred from a court of whose good will we have so much need, to the breasts of a private company.*' That the credit of the United States is sound in Holland ; and that it would probably not be difficult to borrow in that country the whole sum of money due to the court of France, and to discharge that debt without any deduction ; thereby doing what would be grateful to the court, and *establishing with them a confidence in our honour.*"\*

This subject was resumed in a letter from Jefferson to Jay of the twelfth of November following.† He wrote : " In a letter which I had the honour of writing you on the twenty-sixth December, I informed you that a Dutch company were making propositions to the minister of France here, to purchase at a discount the debt due from the United States to this country. I have lately procured a copy of their memoir, which I now enclose. Should congress think this subject worthy their attention, they have no time to lose, as the *necessities* of the minister, which *alone* have made him to listen to this proposition, may *force* him to a speedy conclusion "

The former of these letters was referred to the board of Treasury, who on the second of October of the following year made a report ; which, after reciting the previous extracts of the letter of Jefferson, contains comments full of meaning :—

" That at the time the debt due from the United States to the crown of France was contracted, it could not have been foreseen that the different members of the union would have hesitated to make effectual provision for the discharge of the same, since it had been contracted for the security of the lives, liberties, and property of their

several citizens, who had solemnly pledged themselves for its redemption; and that, therefore, the honour of the United States cannot be impeached, for having authorized their minister at the court of France to enter into a formal convention, acknowledging the amount of the said debt, and stipulating for the reimbursement of the principal and interest due thereon.

“That should the United States at this period give any sanction to the transfer of this debt, or attempt to make a loan in Holland for the discharge of the same, the persons interested in the transfer, or in the loan, would have reason to presume that the United States in congress would make effectual provision for the punctual payment of the principal and interest.

“That the prospect of such provision being made within a short period, is by no means flattering; and though the credit of the United States is still sound in Holland, from the exertions which have been made to discharge the interest due to the subscribers to the loans in that country, yet, in the opinion of this board, it would be *unjust* as well as *impolitic*, to give any public sanction to the proposed negotiation. Unjust, because the nation would contract an engagement without any well-grounded expectation of discharging it with proper punctuality. Impolitic, because a failure in the payment of interest accruing from this negotiation (which would inevitably happen) would justly blast all hopes of credit with the citizens of the United Netherlands, when the exigencies of the union might render new loans indispensably necessary.

“The board beg leave further to observe, that although a grateful sense of the services rendered by the court of France, would undoubtedly induce the United States in congress to make every possible exertion for the reimbursement of the moneys advanced by his most christian majesty, yet, that they cannot presume that it would tend

to establish in the mind of the French court *an idea of the national honour of this country*, to involve individuals in a heavy loan, at a time when congress were fully sensible that their resources were altogether inadequate to discharge even the interest of the same,\* much less the instalments of the principal, which would from time to time become due. *How far the idea of transferring the discontents which may prevail in the French court, for the want of the punctual payment of interest, to the breast of the private citizens of Holland*, would be consistent with sound policy, the board forbear to enlarge on.

“It may be proper, however, to observe, that the public integrity of a nation is the best shield of defence against any calamities to which, in the course of human events, she may find herself exposed.

“This principle, so far as it respects the conduct of the United States in contracting the loans with France, cannot be called in question. The reverse would be the case, should the sanction of the United States be given either to the transfer of the French debt, or to the negotiation of a loan in Holland for the purpose of discharging it.

“If it be further considered, that the consequences of a failure in the punctual payment of interest on the moneys borrowed by the United States, can by no means be so distressing to a nation, (and one powerful in resources,) as it would be to individuals, whose dependence for support is frequently on the interest of the moneys loaned, the board presume that the proposed negotiation cannot be considered at the present juncture, in any point of view, either as eligible or proper. Under these circumstances,

\* Jefferson wrote to Carmichael at Madrid, June 14, 1787 —“New-York still refuses to pass the impost in any form, and were she to pass it, Pennsylvania will not uncouple it from the supplementary funds. These two states and Virginia, are the *only ones*, my letters say, *which have paid any thing into the continental treasury for a twelvemonth past*”

they submit it as their opinion, "that it would be proper without delay to instruct the minister of the United States at the court of France,\* not to give any sanction to any negotiation which may be proposed for transferring the debt due from the United States, to any state, or company of individuals, who may be disposed to purchase the same."

So jealous were congress of the injury which this proposition might inflict on the national character, that on the day on which this report is dated, they instantly passed an act instructing Jefferson not to promote any negotiation for transferring the debt due to France from the United States †

Thus the national honour was saved, but the lure had succeeded. In prosecution of the project, a letter was addressed by Jefferson to Dumas,‡ to ascertain its practicability, whose reply evinced a preference of a purchase for a sum less than its face, to a loan for the whole amount, and urged prompt action, stating that the *sacrifice* on the part of France, would be very *small*. An arret was accordingly framed and submitted to Calonne That minister, grasping at such a prospect of relief from his financial difficulties, soon after this purchase was suggested, addressed a letter to Jefferson, giving the assurance that the monopolies on particular articles would not be renewed, and that the duties on most of the imports, the growth of the United States, in French or American vessels, were "suppressed."§ The execution of this arrangement was,

\* 3 D. C. 183.

† 3 D. C. 289.

‡ Dumas had a pension from France, revertible to his daughter.

§ 3 D. C. 163 — Oct. 22, 1786. — This letter also states, that as Virginia had ordered arms for her militia from France, the duties and prohibition of them should be abolished. Similar supplies had been furnished by France to her during the war, which gave rise to questions in the settlement of the accounts. A more serious difficulty grew out of an act of that state, passed pending Jefferson's negotiation about the debt, giving a preference to French

however, suspended, not improbably in consequence of the rejection by congress of the proposed transfer of the debt. But the disturbances in Holland, and the hostile appearances in Europe, notwithstanding a temporary pacification, ultimately induced the issuing of arrets, enlarging in some particulars, and abridging in others. the former arrangement.

One topic of discussion yet remained It has been previously mentioned that the treaty with France provided for the mutual appointment of consuls, under a convention to be framed between the respective governments. This subject was not acted upon until July, seventeen hundred and eighty-one; immediately after the resolutions, submitting the terms of a treaty with Great Britain, had been passed. A memoir was at that time presented by La Luzerne, containing a draft of a consular convention, prepared at Paris.

It was in its essential features approved by congress the following January, with one material difference. The French plan proposed the presentation, by their consuls, of their commissions to the respective states, which were to grant them their *exequaturs*. The American draft required that the consuls should, "in the *first instance*," present their commissions to congress, to be recognised by them by a public act, and then to have validity in the states This plan was sent to Franklin, with instructions to exercise his discretion as to the words or arrangement of it, but to confine himself in all important respects to its substance

brandies The minister of the Netherlands presented a remonstrance against this preference, as a breach of treaty In this treaty, Adams had omitted an important provision, securing *compensation* for privileges, but the United States considered this as a gratuitous favour. The injury was acknowledged, and resolutions were adopted by congress, urging Virginia to repeal the act, founded on a report from the department of foreign affairs, censuring the granting of favours *by any state*.—4 S J 401.



A convention was entered into by him, and was submitted to congress in seventeen hundred and eighty-four ; France having in the mean time appointed Marbois consul-general, with a subordinate corps of consuls and vice-consuls. On the consideration of this convention, congress, at the instance of Jay, unanimously resolved, that instructions should be given that the signature of the convention should be delayed until further advices, unless it had been already signed. A despatch from Franklin announced that it had been already signed, and that a copy had been so long since transmitted to congress, that its ratification was expected ; he added, "I am not informed what objection has arisen in congress to the plan sent me. *Mr. Jefferson thinks it may have been to that part which restrained the consuls from all concerns in commerce.*"\* Congress had delayed to act upon it, until, a formal demand of its ratification being made by France, the convention was deliberately examined by the secretary of foreign affairs.

On this examination it appeared that it proposed three principal objects, in the promotion of which, it was manifest, that the United States had no interest.

The *first* was, a provision against the infraction of the French and American laws of trade. As the United States had no laws for the regulation of her commerce with France or her dominions, there could be no use in a provision against the infraction of them. The *second* was, a restriction of the emigration to the other, of the people of either country, which, as there was no reason to apprehend emigration from the United States to France, was superfluous. The *third*, established a corps of "consuls, vice-consuls, and agents," so coherent, so capable of acting jointly and secretly, and so ready to obey the order of their chief, that it could not fail of being influential in two

very important *political* respects—the acquisition and communication of intelligence, and the dissemination and impression of such advices, sentiments, and opinions, of men and measures, as it might be deemed expedient to diffuse and encourage.” An arrangement, which, in France, “where nothing could be printed without being licensed, or said without being known, and, if disliked, followed with inconvenience, and where the people being perfectly unimportant, every measure to influence their opinions must be equally so, could be of no use to America,” but which in the United States would be most dangerous to her institutions.

The powers and immunities with which this corps was clothed, were equally objectionable. By one article, certified declarations made before the consuls, were to be received in evidence as conclusive. By another, the consuls were invested with jurisdiction over all offences in which the citizens of the respective countries were parties, to the exclusion of the civil tribunals constitutionally created, while full immunity was conferred on their persons, papers, houses, and dependants. Consular chanceries were also created, which in many respects clashed with the internal policy of the United States, and a complete jurisdiction was given over French vessels in American harbours. It is also not a little remarkable, that the original feature in the French plan, which directed the commissions to be presented on their arrival to the respective states, according to the forms established there, was retained, notwithstanding the express instruction to follow the plan of congress, which directed these commissions, “in the first instance” to be presented to them. This, connected with the suggestion of Vergennes to Adams, that each state should appoint its own ministers, combined with the other circumstances of a direct loan being made by France to Virginia, and a commercial exemption being obtained from

her, leaves a strong implication that France had in view relations with the individual states, independent of congress, and in direct violation of the articles of confederation, and that Jefferson was not insensible of the advantages Virginia might derive from these dispositions. The position of the United States was not a little embarrassing. The scheme having been framed by a former legislature, was conclusive upon the country, and its execution was urgently pressed by the French chargé d'affaires.

As the only alternative, instructions were transmitted to Jefferson to state the objections to the present form, and to give assurances of their readiness to ratify a convention agreeable to the scheme originally framed, on the condition of its being limited to eight or ten years, instead of its being perpetual, as was first agreed. After much negotiation, a convention liable to fewer objections than that signed by Franklin, was concluded in seventeen hundred and eighty-eight; and after an inquiry how far it was obligatory upon the country, was ratified from necessity by the present government.

The fruitless efforts made by the Spanish resident at Paris to induce Jay to enter into a treaty, the basis of which was a sacrifice of a large part of the undoubted territory of the United States, and, as a consequence of such sacrifice, the total abandonment of the Mississippi, have been the subject of previous comment.

On the third of June, seventeen hundred and eighty-four, a few days after Jay had been elected secretary of foreign affairs, and Jefferson chosen commissioner in his place, it was thought advisable to renew the instructions of seventeen hundred and eighty-two; and a resolution, moved by Nathan Dane, of Massachusetts, passed, directing the American commissioners "not to relinquish or cede, in any event, the right of the citizens of the United States to the free navigation of the Mississippi from its source to the ocean."

It has been seen that, notwithstanding the recent negotiation with Jay at Paris, the commissioners, or some of them, were required to repair to Madrid. This was not acceded to, and Spain, sensible of her error, sought to remove the prejudices of the United States by a course of conciliation. She mediated a peace between them and the emperor of Morocco, on terms favourable to the former. She released a number of Americans, who had been imprisoned at Havana for breaches of her navigation laws, and she commissioned Gardoqui, a partner of a commercial house at Bilboa, who had been the medium of aids from Spain at an early period of the revolution, to negotiate a treaty. He arrived in seventeen hundred and eighty-five, when the secretary of foreign affairs was authorized to treat with him.

The point upon which the former negotiation had broken off, still remained an insuperable obstacle. While Spain offered to treat on terms, in other respects deemed by Jay of the greatest advantage, she still insisted upon the retention of the territory east of the Mississippi, and consequently upon the exclusion of our citizens from its navigation. Late in the preceding year she had caused it to be announced to the United States, that vessels trading through that river would be exposed to process and confiscation. The obstruction of them, by her garrison at Natchez, was indicative of her determination to enforce her pretensions. The question now assumed a new aspect. The navigation could not be permanently relinquished. To submit to the enforcement of her restrictions, while their justice was denied, would be humiliation ; to resist by arms, was war.

Influenced by this state of things, by his impression of the other advantages of the treaty, and by the consideration that Spain was in possession of posts on both branches of the river, rather than the United States, without money, without credit, and without an army, should be plunged

into a war, "with very little prospect of terminating it by a peace, either advantageous or glorious," the American secretary attended congress, and enforced<sup>4</sup> the propriety of a treaty, limited to twenty-five or thirty years; one of the articles of which would have stipulated the forbearance of our citizens to use its navigation below their own territories to the ocean for a like term. This proposition gave great offence. The delegates from the northern states approving it, while those of the southern condemned it. A motion was made to revoke his commission, which was defeated; and a resolution was introduced, repealing the instruction to stipulate the free navigation of the Mississippi to the ocean, consenting to a modified use of it,<sup>†</sup> but with a proviso to insist upon the territorial limits fixed by the definitive treaty with Great Britain. A strong remonstrance was made by the delegates of Virginia, in which, not merely these questions, but the whole plan of the treaty, was objected to.<sup>‡</sup>

Jay's plan proposed to give to the *merchants, vessels, productions, and manufactures* of each country, the same privileges as if they were those of the country itself. It was urged that as Spain made no discrimination in her ports between her *merchants* and those of other nations, by this article the United States relinquished the right of making any discrimination, however beneficial it might be to her, without any consideration. As to the *vessels*, it was objected that as Spain admitted those of all coun-

\* 6 D C 165.—August 3d, 1786.

† These modifications were, permission to land and store American productions at New-Orleans; an *advalorem* duty to be paid to Spain on all shipments thence by American citizens; permission to our merchants to reside there; a privilege to American vessels to return from its mouth to that port, but not to carry any goods, contrary to the regulations of Spain, under pain of confiscation.

‡ 4 S J 87.

tries, even in the carriage of her own productions, "the United States bound themselves up again without a valuable consideration." As to *productions*, by the policy of Spain we now enjoyed the free admission of them; nothing therefore could be gained to us in this respect; and when our "commerce is subjected to the most severe restrictions in almost every foreign port—fish being excluded by France and Britain—the Mediterranean shut against us—the West Indies occluded almost altogether—the wheat and rice trade thus greatly injured—tobacco in France a monopoly, in Spain contraband—one would suppose it the duty of every wise American statesman to secure our rights and interests at home—to give in our own ports to our own citizens exclusive privileges; but of this advantage the project would deprive them." This proposed stipulation was objected to on other grounds. It would be contrary to the policy of the British navigation act, "by the wisdom of which, and of her other regulations in commerce, it was stated, Britain had attained to such a height of power and grandeur on the seas as to be at the same time the terror and the admiration of the world;" and yet of the benefits of such a policy and making such discriminations this project would deprive us. As to *manufactures*, it was urged that the right of prohibition or restriction on exports or imports was given up. This was without a precedent, unless it was the "family compact," which proved inconvenient and was annulled; independent nations having always retained the right of regulating their own interior police, and thus of securing reciprocity, a right, the exercise of which would be subservient to various purposes—the promotion of virtue and frugality, by the prohibition of foreign luxuries—the encouragement of manufactures and of the mechanical arts, by the prohibition of imports. The treaties with France and other powers stipulated to each the right of the most favoured nations. These nations

coming into the terms of Spain, in doing which they will give up nothing, will be entitled to these benefits ; “the evils of this project will be therefore almost universal, and of course without remedy.” The surrender or forbearance of the use of the Mississippi was objected to as inconsistent with the compact with Virginia as to the western territory And it was also contended that its effect would be to dismember the government by a treaty of commerce, which could not be done under a limited power to treat.

It would be difficult to select an instance in which the United States had less motive to reserve or to exert the power of discrimination or prohibition. As to *vessels*, from the course of the trade, the cargoes and the superior economy of American navigation, a successful competition on the part of Spain was hopeless. How the policy of the British navigation act could, under such circumstances, the United States being the carriers, have been advantageously adopted, it is not easy to suppose. As to *productions*, the only object of Spanish traffic the importation of which this country has found it expedient to prohibit, is that of slaves. As to *manufactures*, those of Spain have never sought the American market.

But it was urged, if the commerce with Spain should be placed on the footing of natives, that France and Sweden would in virtue of their treaties be entitled to the same terms, only by reciprocating to the United States the same privilege Was this an evil to be deprecated ?

It cannot escape observation how entirely the principles of this report are at variance with the instructions proposed by Jefferson. Its details have been given chiefly to show how great and rapid had been the change of opinion as to the commercial policy of this country, two years only having elapsed since the approval of those instructions by congress. That Virginia should have been the first state since the peace to have proposed, and the first

to have objected to a system of free trade, is only an instance of the error of applying rigidly general maxims of policy to the conduct of nations, without regard to the modifications circumstances may indicate. Nor will it fail to be remarked as additional evidence of the timid counsels by which that state had been governed, that though in seventeen hundred and eighty-one, her legislature had instructed Madison to authorize Jay to *cede* the right of navigating the Mississippi to Spain absolutely and for ever, she now declared that to consent to a *suspension* of that right would be "to dismember" the government.

The importance Spain attached to that right, is shown not only by her conduct during the war, but by the promptitude with which she opened a negotiation respecting it after the peace. Claiming the exclusive right, and denying the pretensions of this country, it was thought to be an important object attained if a treaty could be made which would imply that she accepted the use of the river as the lessee of the United states for a specified time, and thus virtually recognised the reversionary right to be in them ; thus terminating all questions of ownership.

Impelled by this strong motive, and little anticipating the rapid growth of the western territory, Jay considering that by this treaty the United States "gained much, and sacrificed or gave up nothing," continued his negotiation with the *chargé* of Spain. He fortunately refused "to admit the navigation of the Mississippi below their limits on any terms, nor would he consent to any article acknowledging their right in express terms, and stipulating to forbear the use of it for a given time," a difficulty that Jay supposed could be overcome by implication, in which idea Gardoqui concurred.

The vote prohibiting a surrender of the navigation of the Mississippi was a vote of nine states : that authorizing this compromise was given by seven states. The consti-



tutionality of this vote was denied by the southern states : and as the division was geographical, gave rise to much excitement. On the part of the south, it was alleged that New-England was solely actuated by a desire to check the population of the west, and thus maintain her preponderance in the union. The eastern states having opposed the alienation or suspension of this right when the southern states were its advocates, repelled the charge, and urged that this temporary cession would fix the permanent right in favour of this country, and prevent a coalition then apprehended between Great Britain and Spain. A resolution passed directing Jay to report the state of the negotiation ; and as soon as the disposition of congress to consent to a limited use of the navigation was disclosed, a wide alarm was spread along the western frontier, and mutual complaints of aggression by the borderers were heard. These complaints were referred to Jay, who having stated acts of hostility by both parties, and his conviction of the right of the United States to navigate that river from its source to the ocean, expressed the opinion that if interrupted by her " it will be proper to declare war against Spain."

In this state of the question Madison proposed to refer the consideration of the American grievances to a committee, but was unsuccessful. In the mean time the agents of France had manifested great solicitude. It was their wish\* that the negotiation should be committed to Jefferson and transferred to Madrid. With this view Madison,

\* March 19, 1787—Madison to Jefferson :—" I discover, through several channels, that it would be very grateful to the *French politicians here* to see our negotiations with Spain shifted into *your hands*, and carried on under the mediating auspices of their court."

April 15, 1787—Madison to Edmund Randolph —" *We mean to propose* that Jefferson be sent under a special commission, to plead the cause of the Mississippi at Madrid"—Madison Papers, vol. 2, p 625, 637.

on the eighteenth of April, proposed that a special commission should be issued to Jefferson to proceed to Madrid "to enter into commercial stipulations, and to make such representations and urge such negotiations as will be most likely to impress on Spain the friendly disposition of the United States, and to induce her to make such concessions touching the southern limits and their right to navigate the Mississippi below them, as might most effectually guard against a rupture of the subsisting harmony, and promote the mutual interests of the two nations." This proposal was referred to Jay; he had previously made a report showing the disposition of France to promote the views of Spain, and he now strongly dissuaded this measure. He stated that it was more *advantageous* and more *honourable* to negotiate at home; that this transfer would offend the Spanish chargé, who would confirm the suspicions which this measure might excite in his court of an intention to amuse her, a suspicion to which the language of this resolution, as it only empowered him to confer, but not to conclude a treaty,\* would be too apt to give colour. Twelve months after, the excitement in the western region having increased by the extended rumour of a disposition to surrender this right, the delegates from North Carolina proposed a declaration by congress that the United States "have a clear, absolute, and *unalienable*" claim to it. Jay, to whom it was referred, reported that a declaration ought to be made that this rumour was not

\* In this report, Jay observed in reference to the terms of this resolution "Perhaps this may only be an inadvertent inaccuracy in the motion, if not, it gives much colour to the inferences above suggested"—4 S. J. 342 At the sitting of the Virginia convention, Monroe reproved the conduct of this negotiation Madison replied—"From the best information, it *never was* the sense of the people at large or the prevailing characters of the eastern states to *approve* of the measure"—2 Elliot's Debates, 262-3 But see Madison Papers, v. 2, p. 637, 642

founded in fact ; but objected to an assertion that the right was unalienable, lest it might exclude the possibility of such modifications as, without impairing it, might be advantageous to the country and satisfactory to its citizens. A new committee was then raised, of which Hamilton was chairman. He introduced resolutions, which were adopted,\* that the reported purpose to surrender this right, not being founded in fact, the delegates be at liberty to communicate all such circumstances as may be necessary to contradict it and remove misconceptions: "That the free navigation of the river Mississippi is a clear and *essential* right of the United States, and that the same ought to be considered and *supported* as such."

The same disposition which had been evinced upon this question in seventeen hundred and eighty-two, continued to be manifested by Vergennes. In answer to an inquiry as to the extent of the guarantee in the treaty of alliance, he intimated that "our limits were not fixed;" and the French chargé d'affaires was selected by Spain to communicate to congress the menace of confiscation, previously mentioned, if their vessels continued to commerce on the Mississippi.

The jealousies to which this negotiation gave rise, were fanned by the partisans of France, and were among the means of exciting hostility against some of the most prominent friends of the federal constitution.

The relations with Great Britain still more exhibit the disunion and impotence of this assemblage of states.

As soon as her restrictive proclamations were known, a general shock was felt throughout the confederacy. Commerce was thrown out of its usual channels, and the merchants, largely indebted for the extensive importations they had made, looked round in despair for an outlet to the produc-

\* September 16, 1788

tions, with the proceeds of which, they were to meet their engagements.

To judge of the extent of the evil, it is only necessary to recur to the fact, that of the whole amount of their exports when colonies, those to the West Indies exceeded one-fourth. It was the more severely felt, because it chiefly fell upon the fisheries ; that prolific treasure of the ocean, which the population of New-England regarded as a source of exhaustless wealth, whereof the product had composed more than one half of the articles of commerce in the West India markets, and a very large proportion of the whole exports of the colonies.\* Cramped as they had been by the restrictive policy of the parent country, they had always found in the valuable products of the West Indies a return for the fruits of their enterprise, which afforded them continual relief. When deprived of this resource, universal irritation followed. The merchants were first aroused to opposition. This feeling soon extended to the people. Wholly unprepared to encounter the difficulties incident to their existence as an independent nation, and overlooking the rigid restrictions of France on the commerce with her dependencies, they denounced, as an act of hostility, the exercise of the unquestionable right of another independent nation to pursue its own distinct interests.

General combinations were instantly entered into to prevent the unloading of British vessels. New-Haven, where the occlusion was much felt, was foremost in the measures to induce the prohibition of English ships arriving

\* The markets of Canada, Newfoundland, and Nova Scotia, and of a part of Europe, were cut off, and the annual government bounty of £20,000 sterling had ceased

The product of the fisheries was estimated in congress to be one-sixth of the whole exports of the United States, elsewhere, at one-tenth. In 1775, Massachusetts employed in them, fourteen thousand tons; in 1787, four thousand.

from the West Indies. A meeting was held at Philadelphia, urging in strong terms the same policy, which was re-echoed throughout the impoverished confederacy. While such was the temper of this country, an essay appeared in London, which being considered as an expression of the sentiments of the ministry of Great Britain, had much influence. It espoused with warmth the system of monopolies, argued the dependence of the confederacy upon British supplies, and promised to England, without further concessions, the exclusive trade of the United States. It also took an extensive view of their political condition; disclosed an undisguised contempt of the articles of the confederation; a full consciousness of the inability of congress to fulfil any treaty, from the conflicting powers reserved to the states; and a hope to avail themselves of the anarchy which must arise from the contending interests of various legislation, and of the facilities which the want of a uniform policy must give to the introduction of British manufactures.

Various replies to this pamphlet were made, showing great diversity of opinion, indicative rather of the ingenuity and fertility of the popular mind, than of sound and practical views of the true interests of the country. An essay at last appeared, containing "Strictures on commerce," which, taking an enlarged view of the British system, showed the impolicy of her monopolies, and that a general power of commercial regulation vested in congress would alone protect the commerce of this country, and prevent a dissolution of the union.\* This opinion gained rapidly, and being accelera-

\* This pamphlet was from the pen of William Bingham, late agent of congress at Martinique, elected to that body in 1786, and subsequently a senator of the United States. His language is, "The states, from a sense of common danger and common interest, will more closely unite together, and form one general system of exclusive navigation, in regard to Great Britain, established on clear, equal, and determinate principles of commercial retala-

ted by the remonstrances of the West India islands, induced, at last, a definitive action by congress. The states were invited to invest them with this power for a short term; but this salutary proposition was opposed, and it was sought to substitute a recommendation to each legislature to make the discrimination.\* Though this opposition proceeded principally from jealousy of a central jurisdiction, other causes had influence. Of these, the chief was a great diversity of opinion, whether the United States should promote their own maritime importance, or should abandon the ocean to foreigners. The former opinion was maintained by the eastern and middle states; those of the south having no vessels, were disinclined to a system which would temporarily increase the value of freight, and might, as they apprehended, render them tributary to the north. There was little prospect of an early concurrence in this measure. Meanwhile, the various delicate questions which had arisen out of the definitive treaty, and the growing animosities of the nations, showed the importance of closing the widening breach. This could only be effected by a commercial treaty; but the power of making an effective treaty had not been conferred on the confederation; and it has been seen from her reply to the overtures of the joint commission, that England was aware of it. This was a serious difficulty; but had the power existed, great doubts were entertained of the disposition of her councils. How long Jefferson continued to flatter

tion, which will pervade the whole union. An American looking forward to the future prosperity and power of his country, and contemplating the tendency of this system towards *strengthening the union of the states*, and making it *indissoluble*, will not hesitate to acquiesce, without a murmur, to the existence of these restraining regulations." Yet of *him* Madison states, "Mr. Bingham *alone* avowed his wishes that the Confederacy *might be divided* into several distinct confederacies, its great extent and various interests being incompatible with a single government"—Madison Papers, v 2, p 589.

\* April 30, 1784.

himself, is not known, but the hopeless prospect of the *joint* commission flashed on the mind of Adams soon after the annunciation of Great Britain, that she would require an embassy to London.

In a letter of the thirty-first January, seventeen hundred and eighty-five, to Gerry, a delegate to congress, he puts the inquiry, "What shall be done?" and answers by the observation, "There are but two things—either to send a minister to London, according to the king's polite invitation, and try what can be done there; or, commence immediately the sour work of retaliation. Will the states agree to exclude British ships from their ports, and British manufactures, or any of them? and can such prohibitions be executed, or high duties be levied? Suppose you lay a heavy duty upon every British vessel, or upon British manufactures, to retaliate for the duty on oil, &c., can we go through with it? We have no answers to any of the many things proposed to the British ministry through the Duke of Dorset, and I *really* think nothing will ever be done but by an exchange of ministers.\*"

In another letter of the ninth of March following, he observes, "I think the invitation to send a minister to London should be accepted, as it is undoubtedly our place to send first, and as the neglect of exchanging ambassadors will forever be regarded as a proof of coldness and

\* Life of Gerry, vol 1, 464 —A preceding paragraph of the same letter shows the sacrifices Adams supposed he had made by his long residence in Paris "I see the people have not lost sight of their old friends. I really feel an earnest desire to be one of you; but when will that be possible? It is more agreeable to be at home among one's equals, and to enjoy some degree of respect and esteem among those we feel a regard for, than to be admired by strangers; but to be in a foreign country, among strange faces, manners, languages, and looked at with terror—rarely finding a person who dares to speak to one, as has been my case, Mr Dumas', Mr Jay's, and others, for years together, is horrible; oh! 'tis horrible"

jealousy by the people of England, the people of America, and by all the courts and nations of Europe." A letter from him to the secretary of foreign affairs of the same date observes, "I am sure we could not do less, separately, than we are likely to do together. . . . . I make no scruple, no hesitation to advise that a minister may be sent ; nor will I be intimidated from giving this advice by any apprehension that I shall be suspected of a design or desire of going to England myself. Whoever goes will neither find it a lucrative nor a pleasant employment, nor will he be envied by me."\*

The reply of Jay enclosed his credentials to the court of St. James.

Having remained some weeks in Paris, as he states, to perform the ceremonial of taking leave of the court of France, he arrived in London in May, prepared for his presentation at that of Great Britain.† These matters of etiquette being disposed of, Adams soon after entered upon the business of his mission.

It has been seen in his letter of January, written previous to his appointment, that an "embassy or retaliation" are presented as the alternatives. Those subsequent to it approve of the discriminating resolutions of certain states, and urge "that we have no means to make an impression, but by commercial regulations, which the vulgar may see strike essentially at their interests without injuring our own." The extent of the constitutional treaty power is also discussed ; the supposed absurdity of thirteen ministers at every court, is indicated ; the necessity of enlarging it, is zealously inculcated. This question had not occurred to the American commissioners on the annunciation to England of their joint authority.

\* 2 Dip Cor. 167

† His amusing record of his presentation to the king and queen, will be found in Dip. Cor. vol 4, p. 211



The instructions to Adams directed him to insist upon the surrender of the posts and territories within the limits of the United States ; to remonstrate against the infraction of the definitive treaty by the deportation of slaves and other property , and to represent the necessary tendency of the British restrictions to incapacitate our merchants from remitting to theirs, and the losses which would be sustained by an immediate pressure for the payment of debts contracted before the war. These claims were stated to the British minister at length. In prosecution of his object, the draft of a commercial treaty, the terms of which were subsequently approved by congress, was soon after submitted to the English cabinet.

England had expressed her readiness to receive proposals, but no disposition was evinced by her to enter upon a negotiation, nor to accredit an ambassador to the United States. The only reply given to the plan of treaty, was the inquiry, " Can the United States secure any privilege to Great Britain in which France will not participate ?" \* and the embassy to London was acknowledged by the appointment of a consul.

These were things not to be endured, and yet not to be resented by the American envoy. Feeling that from the magic circle of court formalities there was no escape, Adams, relying upon the vast results he attributed to a similar procedure at the Hague, resolved to bring the British ministry to a stand by presenting a memorial demanding the evacuation of the frontier posts. But again delay was followed by delay—all was ceremony—month after month elapsed, when a reply was at last given. This reply avowed the determination of Great Britain to act in perfect conformity with the strictest principles of justice and good faith, and her readiness to carry every article of the

definitive treaty into full effect whenever America should manifest a real determination to fulfil her part of it. It recapitulated the legislative acts of eight states, contravening its fourth article, and insisted on the injustice of being obliged to a strict observance of the public faith, while America held herself free to deviate from her engagements.

This answer was referred to Jay, who, after a full examination of it, in which it appeared that many of the charges were unsustained, admitted that the first of the imputed violations of the treaty had been committed by the states, some of which were still existing and operating; and that, under the circumstances, it was not a matter of surprise that the posts were detained, and that Britain would not be to blame in continuing to hold them, until America should cease to impede her enjoying every essential right secured to her and to her people and adherents by the treaty. The report closed with a recommendation, that congress should resolve that the states had no right to construe, retard, or counteract the execution of the treaty; and that all their acts inconsistent therewith should be repealed by their legislatures, in general terms. He also recommended that the American minister should admit to Great Britain the violation of the fourth and sixth articles of the treaty; should state that measures were in progress to correct this; should conclude a convention for the estimation of property removed in violation of the seventh article, and for the remission of interest on private contracts during the war, and should express the determination of the United States to execute the treaty with good faith.

This unwelcome duty was imposed on Adams. The British ministry approved the spirit of the resolutions, but still adhered to the system it had adopted; in pursuance of which an act was passed for the regulation of their

trade with the United States, extending still further the prohibition from her islands of American products. Meanwhile, the tone of the public feeling, the omission to appoint a minister in return, frequent disappointments, and studied procrastinations, wore upon the temper of Adams, who at last, in his correspondence with the United States, cast off all restraint. At times he deemed an abandonment by America of her commerce, the wisest course.\* Again, he urged a vindictive retaliation, as the only means of redress, and poured out philippics, denouncing, with indiscriminate wrath, England—her institutions—her king—her statesmen—her policy—her people.†

This was a wide departure from the opinions he had expressed at an earlier period. "Let us banish forever from our minds, my countrymen, all such unworthy ideas of the king, his ministry, and the parliament. Let us not suppose that all are become luxurious, effeminate, and un-

\* 4 D C 500

† "There is no resource for *me* in this nation. The people are discouraged and dispirited, from the general profligacy and want of principle, from the want of confidence in any of the leaders, from the frequent disappointments and impositions they have experienced in turn from all parties. Patriotism is no more, nor is any hypocrite successful enough to make himself believed to be one. . . . *Fox*, and his friends and patrons, are ruined by the endless expenses of the last election, and have no longer any spirit, or any enterprise. *North* and his friends are afraid of impeachment and vengeance, and therefore will avoid all hazardous experiments, by which the popular cry might be excited. *Pitt* is but a tool and an ostensible pageant, a nose of tender virgin wax; he could not carry in Parliament, nor in the cabinet, any honest system with America, if he meant to do it; but he is himself very far from being steady in his American politics, any more than *Camden* or *Richmond*, and *Sydney* and *Carmarthen* are cyphers."—4 D. C. 444-5, 468, 471. "This nation would now crouch to France, for the sake of being insolent to us."—480. "The most remarkable thing in the king's speech and the debates is, that the king, and every member of each house, has entirely forgotten that there is any such place upon the earth as the United States of America. We appear to be considered as of no consequence at all in the scale of the world."—4 D C 481

reasonable on the other side of the water, as many designing persons would insinuate. Let us presume, what in fact is true, that the spirit of liberty is as ardent as ever among the body of her nation, though a few individuals may be corrupted," &c.\*

Alarmed by his extravagance, and apprehensive of being precipitated by his rashness into a contest for which the country was not prepared, a formal motion was made in congress and adopted, forbidding him to demand a categorical answer to his memorial, lest they should be involved in a war or in disgrace † These orders were transmitted by Jay,‡ who, at the same time, recommended as the true policy of the nation, that "what wrong may have been done should be undone, and that the United States should, if it were only to preserve peace, be prepared for war."

Adams now began to meditate his return to the United States The prospect of a new government opened more grateful scenes, and congress yielded to his desire to leave a position which he had prophetically anticipated would be a "thicket of briars." Dissatisfied with every thing, he bade adieu to England, where his worst fears had been realized of "the insignificance" to which he would sink, and of the alike "dry decency and cold civility" with which he would be treated by the administration and the opposition On his return to the United States, he found new sources of discontent in the circumstances of his recall. On the twenty-fourth of September, seventeen hundred and eighty-seven, a report was made by Jay, embracing two points—an approval of his conduct, and a vote of thanks. It was rejected after a division on each point; but on the fifth of October the congress were in-

\* "Essay on Crown and Feudal Laws, by J. Adams, Ambassador Plen." &c

† 5 D C 358.

‡ May 8, 1786.

duced to relent. For this decision, he is believed to have been chiefly indebted to the exertions of a leading delegate<sup>\*</sup> from Massachusetts.†

Much as there was in the conduct of Great Britain to disappoint expectation and wound national pride, yet on a dispassionate view, it is to be deemed the natural result of the relative situations of the two countries. Many of her statesmen saw, or imagined that they saw, in a close adherence to the colonial system the chief sources of her wealth. Her jealousy had long been awakened to the competition which the character and condition of the American people would produce, and every effort to relieve themselves from the pressure of her monopolies confirmed her adherence to them, and was followed by more minute and rigorous exactions. It could therefore with little probability be expected, that while she maintained her navigation act towards other nations, she would relax her system towards that power whose interference with her trade she most feared, especially as the United States were, by the treaties they had formed, precluded offering to her any equivalent for such an exemption.

England also confided in the magnitude of her capital, in the credits she could give, and in the cheapness of her productions, as ensuring the introduction of them to the American market, where the habits of the people had always secured to her a preference. The efforts of France to compete with her had failed, and while the British merchants were engrossing the trade, France was occupied in speculating on the grounds of such a preference.

These circumstances, combined with too great a deference to the feelings of the monarch, had weight, but the consideration which chiefly influenced the court of St. James, was the political condition of the confederacy.

\* Rufus King.

† 5 D. C. 312.

Whatever might be the future resources of this nation, whatever were the capacities of the people, America now presented an unrelieved picture of anarchy and disunion. Her public engagements had nearly all been violated, her private resources appeared either to be exhausted, or could not be called into action ; and while the individual states were pursuing measures of mutual hostility and detriment, the confederation was powerless over their laws, powerless over public opinion. Hence, to every argument or inducement in favour of a commercial treaty, there was an irrefutable reply—America will not, or if she would, she cannot fulfil it. “Our ambassadors,” Hamilton observed, “were the mere pageants of mimic sovereignty.”

In this brief retrospect of the negotiations with the two leading powers of Europe, nothing is more obvious than the want of that practical common sense, which had carried this country through the revolution both in the objects, and in the conduct of them. This country was, in fact, without a government. Could it be hoped, that either France or England would treat on advantageous terms with a people who had not the power to fulfil their engagements ? Could it be supposed, for a moment, that those old governments would abandon their artificial systems and fixed maxims, affecting so many public and private interests, for an untried theory ?

Jefferson\* at an early period advised that “the American workshops should remain in Europe,” that “perhaps it might be better for us to *abandon* the *ocean* altogether, that being the element whereon we shall be principally exposed to jostle with other nations; to leave to others to bring what we shall want, and to carry what we can spare.” Now he is the projector of a system of entangling connec-

\* Notes on Virginia, p 175, 176.

tions with all the nations of Europe. He voted against a proposition to adopt the commerce of "natives" as the basis of treaties, and he proposed to treat with England on that basis. "I know," he wrote to Adams, "it goes beyond our powers, and *beyond the powers of congress too*; but it is evidently for the good of all the states that I should not be afraid to risk myself on it, if you are of the same opinion."\*

Abandoning the principle of his own instructions,† he suggested to Vergennes‡ "that both nations would cement their friendship by approaching the conditions of their citizens reciprocally to that of 'natives,' as a better ground of intercourse than that of 'the most favoured nation.'" The reply of France was an arret, approving in its preamble a general freedom of commerce; but vindicating the "exclusion of foreign goods, as required under existing circumstances by the interest of the kingdom."

Yet he at the same period avows, "were I to indulge my own theory, I should wish them (the United States) to practise neither commerce nor navigation, but to stand, with respect to Europe, precisely on the footing of China."§

The opinions of Adams as to the foreign policy of this country, were not less various.

At one time he avowed, "that it is in the power of America to tax all Europe whenever she pleases, by laying duties upon her exports, enough to pay the interest of money enough to answer all their purposes."|| He then enters into this project of commercial freedom; then denounces it, declaring, "that we had hitherto been the bubbles of our own philosophical and equitable liberality;" and indicates as the only means of redress, "commercial regulations"¶

\* 2 D C 338 — July 28, 1785    † Niles, v 12, p 82.    ‡ November, 1785.

§ October 13, 1785 — Jeff. Works, vol 1, 344    || 5 D C. 502.

¶ 2 D C 338.

The course of events had proved the correctness of Hamilton's views, as he calmly consulted the great permanent interests of the country. Though in his liberal spirit the advocate of a policy which he observed would establish "our system with regard to foreign nations upon those grounds of moderation and equity by which reason, religion, and philosophy had tempered the harsh maxims of more early times, and that rejects those principles of restriction and exclusion which are the foundations of the mercantile and navigating system of Europe;" yet, judging wisely of human nature, of the force of habit, prejudice, and passion, he had from the earliest period indicated the necessity of conferring upon congress the power "of regulating trade, laying prohibitions, granting bounties and premiums."\* And when he saw the confederacy nerveless—the states in collusion—the people desponding—their energies withering under the restrictive regulations of Europe—he then again avowed the necessity of counteracting "a policy so unfriendly to their prosperity, by prohibitory regulations extending at the same time throughout the states," as a means of compelling an equal traffic; of raising the American navigation so as to establish "an active" instead of "a passive commerce;" of "a federal navy, to defend the rights of neutrality."

These views, as the perspective of this vast republic rose before him, were embraced in the exhortation—"Let Americans disdain to be the instruments of European greatness! Let the thirteen states, bound together in a strict and indissoluble union, concur in erecting one great American system, superior to the control of transatlantic force or influence, and able to dictate the connection between the old and the new world!"†

\* The Constitutionalist, No 4, August, 1781—No 6, July 4, 1782.

† The Federalist, No 11.



## CHAPTER XXI.

[1786]

IN the domestic situation of this country there was much to justify distrust. The definitive treaty had indeed assured almost Roman limits to the new republic ; but the eastern boundary was disputed—the western denied—while from the frowning fortresses which dotted its outline, each morning's drum-roll struck alarm into the breast of the borderer, as it awakened in the crouching savage his slumbering appetite for carnage. The interior subdivisions were also unsettled. The coterminous states of Massachusetts and New-York had not yet wearied of their disputes. Pennsylvania, though her rights had been established under a constitutional tribunal, was threatened with a contest with the New-England settlers at Wyoming, who were preparing to refer their claims to the most summary arbitrament. Virginia was compelled to release Kentucky from her reluctant embraces. North Carolina was dissevered, and a fragment of her domains was forming into an independent state under the name of Frankland, of which an assembly preparatory to a convention had met.\* While so many inducements existed to adopt a comprehensive national policy, such was the prevalence of state jealousy, that instead of labouring to invigorate the arm of the general legislature, an aversion to the restraints of law, and an increasing disposition to withhold confidence from the constituted authorities, were daily developed. Instead of looking for remedies to relieve the

\* August 1, 1785.

public distresses, in every part of the continent the prevailing anxiety appeared to be to discover new objects upon which to vent dissatisfaction. A bill to repeal the charter of the Bank of North America passed the assembly of Pennsylvania. In New-York, a memorial to incorporate the bank, of which the constitution had been framed by Hamilton, was presented to the legislature early in seventeen hundred and eighty-four ; but so prevalent was the jealousy of a moneyed influence, that it was compelled to conduct its affairs during six years without corporate immunities. The cry arose that banks were combinations of the rich against the poor, although, when not abused, their tendency is to raise industrious poverty above the influence of wealth.

These were minor indications. The craving appetite of discontent called for food, and the recent combinations of military men, and the dangers of a standing army in time of peace, became fruitful themes of clamour. An association of the officers of the late army, formed at the encampment on the Hudson, "to preserve inviolate the liberties for which they had bled, to promote and cherish national union and honour, and to render permanent the cordial affection of the officers by acts of mutual beneficence," under the now venerated title of "the Society of the Cincinnati," to continue during the lives of the members, with succession to their eldest male posterity, became an object of the most violent and wide-spread hostility.

The alarm was first sounded in an address under the signature of Cassius, written by Ædanus Burke, a judge of the supreme court of South Carolina, professing to prove that this association created a race of hereditary patricians. and full of trite allusions to the orders which had sprung up during the ages of European barbarism.

This popular topic was echoed throughout the states, and having performed its office in America, was seized

upon by Mirabeau, and depicted with all the power, art, and eloquence of his extraordinary genius.

The distrust thus excited in the minds of the people was cherished by persons, who, having served wholly in a civil capacity, had long been jealous of the superior popularity of Washington and of his companions in arms. One, with cold philosophy, advised them to "melt down their eagles"\*—while another, with all the vehemence of "a disordered imagination," denounced the association as an inroad upon the first principles of equality—the deepest piece of cunning yet attempted—an institution "sowing the seeds of all that European courts wish to grow up among us of vanity, ambition, corruption, discord, and sedition."† The outcry which had been so successfully raised was deemed of sufficient importance to require the attention of the society.

A general meeting was convened, at which Washington, the president-general, presided, and an abolition of the hereditary provision was recommended. The following documents relating to this subject, show how entirely the real objects of this association corresponded with its professed purpose, and with what sentiments Washington viewed this impeachment of his pure and elevated patriotism. Hamilton thus represented to him the proceedings of the state society of New-York.

"SIR,

"Major Fairlie is just setting out on a visit to you, I believe on some business relating to the Cincinnati. The society of this state met some short time since, and took into consideration the proposed alterations in the original frame of the institution. Some were strenuous for adhering to the old constitution, a few for adopting the new, and many for a middle line. This disagreement of opin-

\* Jefferson

† Adams

ion, and the consideration that the different state societies pursuing different courses—some adopting the alterations entire, others rejecting them in the same way—others adopting in part and rejecting in part—might beget confusion and defeat good purposes, induced a proposal, which was unanimously agreed to, that a committee should be appointed to prepare and lay before the society a circular letter expressive of the sense of the society on the different alterations proposed, and recommending the giving powers to a general meeting of the Cincinnati, to make such alterations as might be thought advisable to obviate objections and promote the interests of the society. I believe there will be no difficulty in agreeing to change the present mode of continuing the society; but it appears to be the wish of our members that some other mode may be defined and substituted, and that it might not be left to the uncertainty of legislative provision. We object to putting the funds under legislative direction. Indeed, it appears to us the legislature will not, at present, be inclined to give us any sanction.

“I am of the committee, and I cannot but flatter myself that when the object is better digested and more fully explained, it will meet your approbation.

“The poor Baron is still soliciting congress, and has every prospect of indigence before him. He has his imprudences, but upon the whole, he has rendered valuable services, and his merits and the reputation of the country alike demand that he should not be left to suffer want. If there should be any mode by which your influence could be employed in his favour, by writing to your friends in congress or otherwise, the baron and his friends would be under great obligations to you.”

Washington replied :—“I have been favoured with your letter of the twenty-fifth of November, by Major Fairlie.

Sincerely do I wish that the several state societies had, or would adopt the alterations that were recommended by the general meeting in May, seventeen hundred and eighty-four. I then thought, and have had no cause since to change my opinion, that if the society of the Cincinnati mean to live in peace with the rest of their fellow-citizens, they must subscribe to the alterations which were at that time adopted.

“That the jealousies of, and prejudices against, this society were carried to an unwarrantable length, I will readily grant; and that *less* than was done *ought* to have removed the fears which had been imbibed, I am as clear in, as I am that it would not have done it; but it is a matter of little moment, whether the alarm which seized the public mind was the result of foresight, envy, and jealousy, or a disordered imagination; the effect of perseverance would have been the same: wherein then would have been found an equivalent for the separation of interests, which, from my best information, not from one state only, but many, would inevitably have taken place?

“The fears of the people are not yet removed, they only sleep, and a very little matter will set them afloat again. Had it not been for the predicament we stood in with respect to the foreign officers and the charitable part of the institution, I should, on that occasion, as far as my voice would have gone, have endeavoured to convince the narrow-minded part of our countrymen that the *amor patriæ* was much stronger in our breasts than theirs, and that our conduct, through the whole of the business, was actuated by nobler and more generous sentiments than were apprehended, by abolishing the society at once, with a declaration of the causes, and the purity of its intentions. But the latter may be interesting to many, and the former is an insuperable obstacle to such a step.

“I am sincerely concerned to find by your letter that the baron is again in straitened circumstances. I am

much disinclined to ask favours of congress, but if I knew what the objects of his wishes are, I should have much pleasure in rendering him any services in my power with such members of that body as I now and then correspond with. I had flattered myself, from what was told me some time ago, that congress had made a final settlement with the baron, much to his satisfaction."

The state society of New-York, of which Baron Steuben and General Schuyler were, at that time, the presiding officers, met on the fourth of July, seventeen hundred and eighty-six; on which occasion Colonel Hamilton delivered an oration, and at an adjourned meeting two days after, he presented a report, which was agreed to, in which his views as to the hereditary succession by right of primogeniture, and the distinction between military and civil members, are seen.

"The committee to whom was referred the proceedings of the society of the Cincinnati, at their last general meeting, beg leave to report, that they have attentively considered the alterations proposed at that meeting to be made in the original constitution of the society; and though they highly approve the motives which dictated those alterations, they are of opinion it would be inexpedient to adopt them, and this chiefly on the two following accounts.

"First—Because the institution, as proposed to be altered, would contain in itself no certain provision for the continuance of the society beyond the lives of the present members; this point being left to the regulation of charters, which may never be obtained, and which, in the opinion of this committee, so far as affects this object, ought never to be granted, since the dangers apprehended from the institution could then only cease to be *imaginary*, when it should receive the *sanction* of a *legal* establishment. The utmost the society ought to wish or ask from the several

legislatures is, to enable it to appoint trustees to hold its property, for the charitable purposes to which it is destined. Second—Because, by a fundamental article, it obliges the society of each state to lend its funds to the state, a provision which would be improper, for two reasons; one, that in many cases the society might be able to dispose of its funds to much greater advantage; the other, that the state might not always choose to borrow from the society.

“That while the committee entertain this opinion with respect to the proposed alterations, they are at the same time equally of opinion, that some alterations in the original constitution will be proper, as well in deference to the sense of many of our fellow-citizens, as in conformity to the true spirit of the institution itself. The alterations they have in view respect principally the duration or succession of the society, and the distinction between honorary and regular members. As to the first, the provision intended to be made appears to them to be expressed in terms not sufficiently explicit; and as far as it may intend an *hereditary succession* by right of primogeniture, is liable to this objection—that *it refers to birth what ought to belong to merit only*; a principle inconsistent with the genius of a society founded on friendship and patriotism. As to the second, the distinction holds up an odious difference between men who have served their country in one way, and those who have served it in another, and improper in a society where the character of patriot ought to be an equal title to all its members.”

Time has furnished the best comment on the character and motives of this association. Notwithstanding all the alarms which were felt, or feigned, and the jealousies which were inflamed, these societies have retained the solitary solace of a riband and a medal to commemorate their sufferings; have persevered in performing their original office of silent benevolence, and are only known to

exist when they assemble to celebrate the birthday of independence; to confer a more sacred distinction upon some modern achievement of patriotism; or to remind posterity, in an unobtrusive recital of his merits, that "another patriot of the revolution is no more."\*

The unrepealed proclamations of our great maritime rival, or, as England was termed, in language becoming an age of barbarism, our "natural enemy," were more worthy objects of opposition, and the first efforts to teach this "assuming brother" moderation, are among the most interesting and instructive portions of American history.

The first proclamation was issued in July, seventeen hundred and eighty-three. In December of that year, Virginia passed a resolution recommending congress to prohibit all intercourse, until the restrictions upon the commerce of the United States were removed. In the following year she enacted several laws of a commercial nature. One was to restrict foreign vessels to certain ports. Having instructed her delegates in congress to remonstrate against the infractions of the treaty, and to render the collection of British debts contingent upon its fulfilment, she passed an act empowering congress to regulate trade and to collect a revenue. In seventeen hundred and eighty-five she gave this subject a more deliberate consideration, and resolutions were proposed and discussed in her legislature of much moment.

\* The medal was of gold, suspended by a blue riband edged with white, indicative of the union with France. The principal figure was Cincinnatus, three senators presenting him a sword, and other military ensigns. On a field in the background, his wife standing at the door of their cottage, near it a plough and instruments of husbandry. Around the whole, "Omnia reliquit servare rempublicam." On the reverse, sun rising, a city with open gates, and vessels entering the port, Fame crowning Cincinnatus with a wreath, inscribed, "Virtutis premium." Below, hands joining, supporting a heart, with the motto, "Esto perpetua." Round the whole, "Societas Cincinnatorum, instituta A. D. 1783."



It was moved that her delegates should be instructed to propose a recommendation to the states, to authorize congress to regulate the trade and collect the revenue upon the following principles. To prohibit vessels of *any nation not in treaty* from entering any of the ports of the United States, and to impose any duties on such vessels, or their cargoes, as they should judge necessary, provided they were uniform throughout the union ; the proceeds to pass into the treasury of the states where they should accrue. To this general authority restrictions were to be annexed, that no state should impose duties on goods from another, by land or water, but might prohibit the importation from any other state of any particular species of any articles, which were prohibited from all other places ; and that no act of congress, affecting this subject, should be entered into by less than two-thirds of the states, nor be in force beyond a limited term. An effort was made to introduce an amendment, authorizing a continuance of this act, by a vote of two-thirds of congress, if given within a year prior to the expiration of the limited period, or a revival of it by a similar vote within a year after. After much debate, the first resolution was so amended as to expunge the words, "nations not in treaty," and to extend the power "to any foreign nation."\*

The authority to collect a five per cent. *advalorem* impost was refused, the restrictions on the respective states were retained, and the duration of the act was limited to thirteen years, the amendment authorizing its being continued having been rejected. After waiting a year for the concurrence of a sufficient number of states, in conferring this general power upon congress, Virginia, following the example of other states, passed a countervailing law, that no vessels trading to the state, other than those owned

\* November, 1785.

wholly by American citizens, or by states having commercial treaties with the United States, should be permitted to import any other articles, than such as were the produce or manufacture of the state or kingdom to which they belonged. She gave a preference of duties to her own citizens, and discriminated between states having and those not having commercial treaties with the United States;\* and for the purpose of encouraging ship-building within the state, gave a drawback on the duties imposed on articles imported in Virginia built vessels, wholly owned by citizens of the United States. These measures, viewed in connection with the vigorous and obnoxious system of taxation† she now imposed, and with the fact that she had opened communications with France in her separate capacity, could leave little doubt that she was preparing for the moment to assume her station at the head of a southern confederacy. In this countervailing policy it is believed that Maryland was the first of the southern states to concur.

The action of New-Jersey upon this subject was nearly contemporaneous with that of Virginia. As early as seventeen hundred and seventy-eight, she had represented, when congress were framing the articles of the confederation, that the exclusive power of regulating trade ought to be vested in that body, and that the commercial revenue should be applied to the equipment of a navy and to the common benefit. As soon as the policy of England gave

\* December, 1786

† She passed a *stamp* act levying duties on legal processes, and upon all alienations of property, and following out her policy of discrimination, a *carriage* tax, which was charged per wheel on all home-built coaches, and was more than doubled on imported carriages. She subsequently prohibited the importation of rum, brandies, and of all foreign malt liquors, and imposed a tax on bar iron and castings, hemp and hempen ropes not the product or manufacture of the United States. Thus far had that state proceeded, urged by a strong necessity, in a system of taxation, which, though much modified, she subsequently strenuously opposed.

practical evidence of her wise foresight, she again resolved\* that congress ought to be invested with the power of prohibition. The contiguous state of Pennsylvania had shown herself at an early period inclined to a protective system, and her successive laws give evidence of her desire to encourage and to mature domestic manufactures by bounties and discriminations. Impelled at last by the same motives which had influenced other states, in March, seventeen hundred and eighty-six, she enacted a law restricting her commerce to American vessels, unless the imports were made in bottoms belonging to the countries of which their cargoes were the growth, product, or manufacture. under pain of forfeiture, and levied a tonnage duty of five per cent. on foreign vessels, annexing a condition, that this act should be in force until congress were invested with the necessary powers. She at the same time declared, "that the privilege in the degree retained by the states individually of controlling and regulating their own trade, was no longer compatible with the general interest and welfare of the United States ; reason and experience clearly evincing that such a privilege is productive of mutual inconveniences and injuries among ourselves, and that the systems of several nations, by which our merchants are excluded from the most beneficial branches of their commerce, while the whole of ours is laid open to them, cannot be consistently or effectually countervailed but by a unity of counsel in the great representative body of the United States."

Connecticut had passed an "act for the regulation of navigation" during the war. In the preamble to it, she recited, that as "a free, sovereign, independent state, she had an equal right with all other sovereign powers to the free and undisturbed navigation of the high seas, and to exercise a convenient jurisdiction therein." By this act, her

\* December 24, 1783

governor was appointed "superintendent of marine," and a revenue system was established. In May, seventeen hundred and eighty-four, New-Haven and New-London were declared by her to be free ports. All persons removing there for the purpose of commerce, were to become free citizens; and immunities were offered to foreign capitalists who should engage in trade. This act cautiously provided, that no countenance should be given by it to the slave trade, and that it should not contravene any regulations which congress might be invested with, for the purpose of regulating commerce. Having granted to that body the power of raising an impost, she in the mean time imposed specific duties on certain enumerated articles, and an advalorem duty of five per cent on all other imports, not the growth, produce, or manufacture of the United States, whether imported by land or water from any of the states, with a remission to those imported by citizens of the state through another state for their own consumption. These duties were subsequently increased as to specified articles, most of which were selected with a view to encourage domestic manufactures, for which purpose, she had enacted laws granting bounties.\* Subsequent to this legislation for local objects, she passed an act "vesting congress with power to regulate the commerce of the United States"

While the other members of the confederacy had manifested so strongly their sense of the evils which the policy of England had inflicted upon them, it was to have been expected that Massachusetts, as the largest navigating state, would have been the earliest to feel, the loudest to reclaim against, the most zealous to oppose, the measures

\* May, 1784 — A bounty of two pence per ounce on raw silk raised and spun within the state. In 1787, she exempted from taxation buildings appropriated to the manufacture of woollen cloths, and the operatives from the poll tax, and gave a bounty on spun yarn. Iron works were also exempted from assessment, except sitting mills

which paralyzed her industry. But that energetic state was yet under the influence of the party which had been signally hostile to Washington, and jealous of the general government.

The actual leader of this party was Samuel Adams ; the nominal head, John Hancock. This gentleman was the child of good fortune. It had conferred upon him an importance to which he had not been destined by nature.

Limited in his information, and narrow in his views, he was content with the influence he had acquired over the less instructed population, in which he was much aided by the exterior graces of manner which adorned this possessor of enormous wealth. Jealous of his superiors, his flatterers were his advisers ; hence his " great vanity, and excessive caprice." He was elected the governor of Massachusetts in seventeen hundred and eighty, and continued in office until seventeen hundred and eighty-five, when he resigned his place, shrinking from the responsibilities of a trying crisis. During his administration the government lost its dignity, the laws their influence. An absurd jealousy of congress was cherished, and many of the people were taught to think that Massachusetts would hold a more dignified station as the head of a New-England confederacy, than as a member of the union. It was probably under these influences that her legislature proposed, in seventeen hundred and eighty-three, appointing delegates to meet in convention at Hartford with the states of New-Hampshire, Rhode Island, Connecticut, and New-York, to confer upon the establishment of a uniform system of excise and imposts to be adopted by those states. Hence, probably, her jealousy of a national military peace establishment. Hence, her denunciation of the Cincinnati.

The successor of Hancock was a person of a far different character. James Bowdoin, a man of strong sense, great discernment, enlarged views, whose leisure from public af-

fairs was devoted to the sciences, and who was a valued correspondent of Franklin, on that branch of natural history in which his discoveries have conferred the largest distinction upon the science of this country. The father of Bowdoin was a Hugonot, a native of Rochelle, whence he took refuge in America from religious persecution. The son grew rapidly in public confidence—was appointed a member of the council under Governor Bernard, whose arbitrary proceedings he firmly opposed. He moved on with the revolution, and in seventeen hundred and seventy-nine was chosen president of the convention which framed the constitution of the state, and was the author of several of its most valuable provisions.

He died in seventeen hundred and ninety; but his short career was conspicuous in events of the highest interest. In April, seventeen hundred and eighty-five, about the time he was chosen governor, a town meeting was held at Boston, under the auspices of Higginson and Otis, in whose measures, influenced by the mechanics of that place, Hancock concurred. At this meeting, a petition was preferred to congress to contravene the prohibitions of England, and a circular was addressed to other maritime places, which, after stating the heavy port charges and other duties levied by England, so prejudicial to the carrying trade of the confederacy, proposed that congress should be empowered to regulate commerce in order to secure reciprocity, “and to form a national establishment” to provide for the national debts and protect the trade. In his first message, Governor Bowdoin, taking a larger view of the subject, proposed a general convention of delegates, to define the general powers of the confederacy, to preserve the union, to manage the general concerns of it, and to secure and promote its common interest. This message produced the desired effect. The legislature of Massachusetts adopted a resolution urging congress to recommend a convention

of the states, "to revise the confederation, and to report how far it may be necessary in their opinion to alter or enlarge the same, in order to secure and perpetuate the primary objects of the union." The governor addressed a letter to congress, to be presented by the delegates of the state. This important letter was not presented. The reasons for suspending its delivery are stated in the following reply:—

New-York, September 3, 1785

Reasons assigned for suspending the delivery to congress of the governor's letter for revising and altering the confederation.

It may be necessary previously to observe, that many are of opinion the states have not yet had experience sufficient to determine the extent of the powers vested in congress by the confederation, and therefore that every measure at this time proposing an alteration is premature; but admitting the necessity of immediately investing congress with more commercial powers, it may be expedient to inquire—

First—Whether good policy does not require that those powers should be temporary?

In determining this question, we are led to consider the commercial evils to be remedied, the efficacy of temporary powers for this purpose, and the disposition of the several states touching the subject.

The evils principally consist in the impositions, restrictions, and prohibitions of foreign powers on our commerce, and in the embarrassment resulting from the commercial regulations of our own states. How far temporary powers can remedy these evils, perhaps time and experience can only determine. Thus much may nevertheless be suggested; that as several treaties which are now negotiating by our commissioners in Europe are not to exceed

the term of fifteen years, if the commercial powers to be vested in congress should be of a similar duration, they may remedy the evils for that term, and at the expiration thereof a new commercial epoch will commence, when the states will have a more clear and comprehensive view of their commercial interests, and of the best means for promoting the same, whether by treaties abroad, or by the delegation and exercise of greater commercial powers at home.

Whatever the disposition of the states may be, it can only be known by their acts ; but the different views which they have had of the subject, give reason to suppose that some legislatures will think temporary commercial powers eligible under present circumstances ; and should this be the opinion of but one, an attempt immediately to delegate perpetual commercial powers must fail, and may prevent a delegation of temporary powers. For in politics as in private life, by aiming at too much, one oftentimes accomplishes nothing.

Secondly—If the states are unanimously disposed to increase the commercial powers of the confederacy, should not the additional powers be in the first instance temporary, and the adoption of them as part of the confederation depend on their beneficial effects ? This is a question on which we propose not to venture a decided opinion ; but experience teaches us, that in the formation of constitutions and laws, the wisest men have not been able to foresee the evasions and abuses which in the operation have resulted from vague terms and expressions, latent inconsistencies, artful constructions, and from too full and unguarded a delegation of powers.

Whether the subject of commerce, and the danger to which the states may be exposed by a surrender to the union of their commercial authority, are so fully understood as to justify the consideration of an immediate altera-



tion of the confederation, is a matter that the legislatures alone are competent to determine. Any of them who may not be clear as to either of these points, will probably (as in the other case) be in the first instance in favour of temporary commercial powers, and, if approved by experience, of adopting them as part of the confederation; but should all the states be in favour of an immediate alteration of the articles, will it not be expedient for them previously to consider—that however great the abuse of this trust may hereafter be, however grievous to a considerable part of the union, the powers once delegated in the confederation, cannot be revoked without the unanimous consent of the states—that this may be earnestly sought for, but never obtained—that the federal and state constitutions are the great bulwarks of liberty—that if they are subject on trivial, or even important occasions, to be revised and re-revised, altered and realtered, they must cease to be considered as effectual and sacred barriers, and, like landmarks frequently changed, will afford no certain rule for ascertaining the boundaries, no criterion for distinguishing between the rights of government and those of the people—and, therefore, that every alteration of the articles should be so thoroughly understood and digested, as scarcely to admit the possibility of a disposition for reconsideration.

Thirdly—Shall any alteration, either temporary or perpetual, be proposed in a way not expressly pointed out by the confederation? The thirteenth article provides “that every state shall abide by the determination of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed

by the legislatures of every state " Here no provision is made for or against a convention, and therefore it may be said not to be inconsistent with this article ; but as the proceedings of a convention would not be binding on congress, should the latter think themselves under the necessity of rejecting the report of the former, would not the states, after having thus incurred a considerable expense, be dissatisfied on the occasion ? Would not the members of the convention, which it must be supposed would be men of the first abilities and influence in the several states, be hurt, and opposed in this instance to congress ? And would not parties in the legislatures and among the people, be the consequence ? If so, may not an apprehension of these evils have a tendency to influence some members of congress to give up their opinions respecting the repeal, rather than be involved in contentions ; and if such are the prospects of a convention, will not congress consider it as being contrary to the spirit of the confederation ? Indeed we are, doubtful whether a measure of this kind would not be viewed as manifesting a want of confidence in congress, and on this ground meet their disapprobation.

Fourthly—If an alteration, either temporary or perpetual, of the commercial powers of congress is to be considered by a convention, shall the latter be authorized to revise the confederation generally, or only for express purposes ? The great object of the revolution was the establishment of good government, and each of the states in forming their own as well as the federal constitution, have adopted republican principles. Notwithstanding this, plans have been artfully laid and vigorously pursued, which, had they been successful, we think would have inevitably changed our republican governments into baleful aristocracies. These plans are frustrated, but the same spirit remains in their abettors, and the institution of the

Cincinnati, honourable and beneficent as the views may have been of the officers who composed it, we fear, if not totally abolished, will have the same tendency. What the effect then may be of calling a convention to revise the confederation generally, we leave with your excellency and the honourable legislature to determine.

We are apprehensive, and it is our duty to declare it, that such a measure would produce throughout the union, an exertion of the friends of an aristocracy to send members who would promote a change of government; and we can form some judgment of the plan which such members would report to congress. But should the members be altogether republican, such have been the declamations of designing men against the confederation generally, against the rotation of members, which, perhaps, is the best check to corruption, and against the mode of altering the confederation by the unanimous consent of the legislatures, which effectually prevents innovations in the articles by intrigue or surprise, that we think there is great danger of a report which would invest congress with powers that the honourable legislature have not the most distant intention to delegate. Perhaps it may be said, this can produce no ill effect, because congress may correct the report, however exceptionable; or, if passed by them, any of the states may refuse to ratify it. True it is that congress and the states have such power, but would not such a report affect the tranquillity and weaken the government of the union? We have already considered the operation of the report as it would respect congress, and if animosities and parties would naturally arise from their rejecting it, how much would these be increased if the report, approved by congress and some of the states, should be rejected by other states! Would there not be danger of a party spirit being thus more generally diffused and warmly supported? Far distant, we know it to be

additional tonnage duty, and a double duty upon all imports in such vessels.\* At the same session she imposed discriminating advalorem duties upon certain enumerated articles, and various specific duties, for the avowed purposes of encouraging agriculture, improving the raw materials, promoting manufactures, and inducing economy, and levied an excise duty on distilled spirits, and on several articles of luxury.

New-Hampshire followed the example of Massachusetts. The acts of both of these states, it has been mentioned, were infractions of the treaty with France. A similar policy was adopted by Rhode Island.

These laws proved the inefficacy of state legislation. During their operation almost every foreign ship, destined for those states, sought other ports. Thus a commerce of great value was lost, and with it the revenue which had partly prompted to the discrimination.† These restrictive enactments were soon repealed, and thus all the injuries were suffered which are the fruits of precipitate legislation.

But these evils had a wider influence. The laws levying imposts disregarded all uniformity, both as to the rates of duties, and as to the articles on which they were charged ‡

\* The tonnage duty was five shillings per ton. There was a clause in this act, by which vessels built in Massachusetts, though owned by British subjects, should, on their first outward-bound cargo, pay the same duties as native vessels.

† Representations were made to the Virginia legislature that her commerce had passed into other states, and that what she lost Maryland gained by her lower duties.

‡ The disparity of duties is seen in the fiscal provisions of the southern states, whose interests at that time approximated. Maryland had one shilling and sixpence per ton on goods of those *in* treaty—two shillings and eight-pence on those *not* in treaty. On British goods, six shillings and eight-pence, and two shillings per ton extra on other goods. Virginia had three shillings and sixpence on those *in* treaty—six shillings and sixpence on those *not* in treaty, besides two per cent extra. South Carolina, two shillings and nine-pence on British sugars—one shilling and eight pence on those of other nations.

The consequences of this inequality were soon felt, but instead of looking to the want of uniformity, as the radical source of the mischief, the wildest remedies were resorted to. Oppressive penalties, accumulated oaths, multiplied revenue officers, extravagant and partial exemptions—the obvious resources of ignorant legislation—followed; and when these failed, the states were seen competing with each other in a reduction of duties, in order to secure a preference to their own ports. Another consequence of this disordered state of things was the negotiation of commercial leagues, growing out of geographical causes, between the states of New-Jersey and Pennsylvania, and of Maryland and Virginia, in direct contravention of the sixth article of the confederation. The remedy for these evils had been recommended by congress—the investing them with a general power for the regulation of commerce. The delay to embrace it is more decisive than any other fact of the irrational adherence to state rights. Only four states had fully complied with this recommendation. Six had enacted laws clogged with embarrassing conditions. Two had wholly disregarded it.

How narrow were the views which could not see the advantages of an unrestrained intercourse between the states, thus increasing the variety of exports, and enlarging the field of commercial enterprise! How blind the jealousy which, in withholding a central power to regulate commerce, overlooked the obvious facts, that, intersected as the states are by deeply penetrating rivers, or divided by artificial boundaries, no efficient guards against illicit trade could be interposed by means consistent with the maxims of a mild policy, and with a moderate expense; and that the necessary expense would compel a resort to harsh and onerous systems of taxation; that thus the states “would be obliged,” in Hamilton’s language, “to strengthen the executive arm of government, in doing which their consti-

tutions would acquire a progressive direction towards monarchy."

At the meeting of the legislature of New-York, in the year seventeen hundred and eighty-four, Governor Clinton proposed an enlargement of the powers of congress, if necessary, to counteract the British proclamations. He also suggested the establishment of funds to pay the interest and discharge the principal of the state debt, and indicated as means, exclusive of direct taxation, the sale of the public lands, internal duties and excises, marine passes, and a tax on sales at auction. The suggestion as to the enlargement of the powers of congress, was not acted upon.

The state preferred exercising a control over its commerce, and having established a customhouse, passed an act regulating the customs. This act imposed a double duty on distilled spirits imported in vessels having a British register, but made no other discrimination. A similar duty was, during the next year, proposed on all imports in vessels owned in whole or in part by British subjects, unless, for the purpose of encouraging navigation, such vessels were built within the state.\*

Sensible of the necessity of conferring this power on the confederacy, General Schuyler opposed this act in the senate, and Duer in the assembly. It was negatived by the council of revision, on the ground "that every attempt by a state to regulate trade without the concurrence of others, must produce injury to the state, without any general good; that partial duties would lead to countervailing duties, and that state legislation on this subject, would interfere with and embarrass the commercial treaties." It nevertheless became a law.

\* Congress had, in April, 1784, recommended the grant of a general power to them for this purpose. This local act was passed in the following November.

Assured that the conferring on congress the sole power of commercial regulation, would be an important step towards the institution of a more efficient government, Hamilton is now seen again exerting his influence. The chamber of commerce were advised to petition the legislature. A large meeting was convened in New-York, which was earnestly addressed by him, and passed resolutions recommending the measure. Circulars were issued to the other states, and a correspondence opened, which urged an enlargement of the powers of congress to enable them to regulate trade and to establish a navy.

The legislature yielded to these combined efforts, and at the end of the session of seventeen hundred and eighty-five, passed an act to vest congress for a term of fifteen years with power to prohibit the importation or exportation of articles of commerce in the vessels of states "not in treaty," and also to prohibit the subjects of any foreign state, not in treaty, from importing any goods or merchandise, not the produce or manufacture of the sovereign whose subjects they were. But an express proviso was annexed, excluding the United States from collecting any revenue or duties *within* the state, without the sanction of its legislature.

The delay of New-York to concur in this measure of general relief, had created great excitement in the adjoining states of New-Jersey and Connecticut. The former declared Perth Amboy and Burlington free ports, and offered special exemptions to merchants removing thither, as lures to commercial capital. In Connecticut, such was the discontent, that an entire prohibition of all intercourse with its southern neighbour was proposed, and would probably soon have been attempted.

While this conflicting legislation prevailed in the various states, the patience of the suffering people was nearly exhausted. In several, the debtors were seen striving to obtain an ascendancy in the legislatures, and by suspension acts to

delay the collection of debts ; and a general disposition was discovered, notwithstanding its evils had so recently been felt, to seek relief in state emissions of paper money.

A majority was found in New-York, in despite of the most earnest remonstrances through the press, in favour of the issue of bills of credit, which were declared a legal tender, and a discrimination was contemplated among the different classes of creditors. Two-fifths of the debt due by congress to the state were to be provided for, and the claims of the army, of the holders of the loan-office certificates, and of the board of treasury, were to be turned over to the exhausted exchequer of the union,—thus by dividing the interests of the creditors, to weaken one of the principal supports of the continental system. A bill for the emission of state paper also passed the assembly of New-Jersey, but was rejected by the council through the firmness of Governor Livingston. So great was the popular excitement against him, that this virtuous patriot was loudly decried and burned in effigy.

South Carolina adopted a similar policy. Every effort was made by its citizens to sustain the credit of the paper ; but such were their impoverishment and discord, that it was thought necessary to pass laws tantamount to closing the courts of justice. North Carolina and Georgia\* followed this vicious example. Thus, of the southern states, Maryland and Virginia only escaped the contagion.

Rhode Island, whose conduct had become a reproach to its inhabitants, did not merely issue a state paper, but finding it rapidly sinking, passed laws, rendering a refusal of it at specie value highly penal in the first instance—declared that a second offence should be followed by disfranchisement, and created special tribunals to try the

\* The paper of North Carolina is stated to have depreciated 25 per cent ; that of Georgia and Rhode Island, 80 per cent.



offenders, depriving, by a formal enactment, the accused party of trial by jury. Clauses were added imposing a test oath to support the paper at par, suspending all officers who should not subscribe it within twenty days after its date, rendering a subscription of this oath a qualification of the next legislature, and compelling every male who had arrived at manhood to take it, or be disfranchised. It was called the bloody bill. An information was filed for refusing the paper. The judges of the supreme court decided against it. They were summoned to appear before the assembly to explain their decision : four of them were displaced by the omnipotence of the democracy.

Indignant at these reckless proceedings, Connecticut enacted a retaliatory law suspending existing suits, and forbidding the commencement of others.

Indications of a similar temper were evinced in Massachusetts. A proposition was widely circulated, that the New-England states should virtually abdicate the union by the withdrawal of their delegates from congress ; and in the disorganizing rage for dismemberment, her western counties began to look to a severance from her dominion. But as a state, Massachusetts firmly adhered to the obligations of good faith, resisted every effort to emit paper, rejected with indignation a proposal to purchase her securities at a depreciated value, granted the impost to congress, and subsequently passed a law to carry into effect its propositions for supplementary funds.

The vigour of character which distinguished her in her support of the public faith, was not less shown by that part of her population who, from a variety of causes, were opposed to the requirements of justice.

While in other states much noisy discontent and angry clamour were heard, among this energetic people dissatisfaction soon ripened into rebellion.

Peculiar causes had combined to increase the pressure

on the states of Massachusetts and New-Hampshire. Their seaboard population, from being engaged in the fisheries, and thus following pursuits far removed from the influence of the laws, were little accustomed to restraint. Thrown out of their ordinary occupations at a time when the price of labour was low, they were compelled to seek subsistence on any terms, and thus diminished its general value. The demand for supplies created by their remote expeditions had ceased. The commercial restrictions prevented the outlet of the surplus produce of the state ; and thus each class, the grower and the consumer, were mutually impoverished ; and the taxes, which prior to the revolution had little exceeded one hundred thousand pounds, had augmented to an enormous amount. The depreciation of the currency increased the distress. While it enhanced the nominal amount of the taxes and public charges, by interrupting private credit, it deterred from pursuits which alone could provide resources for their discharge, and led on to speculative measures, all of which aggravated the evil.

A large number also of the inhabitants had been called out by military requisitions during the war on temporary expeditions, and leaving the sober routine of ordinary life, had acquired all the licentiousness without the discipline of the camp. The firmness of the legislature put in motion every active and turbulent spirit. Combinations were formed entertaining desperate designs, and conventions of delegates from extensive districts of the state were held, which adopted the most violent resolutions, censuring every measure that had been taken to fulfil the public engagements ; declaring open hostility to the ministers of justice ; calling for an abolition of all existing contracts ; claiming an equal distribution of property ; and at the same time professing that their proceedings were constitutional !

This ebullition was soon followed by acts of open resist-

ance to the laws. The courts were surrounded by insurgents, mobs accompanied the judges in their circuits; and in the three western and largest counties of the state, all legal process was defied. On intelligence of these proceedings, the state government attempted to exert its civil power; but instead of repressing, this confirmed and irritated the insurgents. The contagion spread from town to town, and it at last became manifest that a military force could alone overawe their violence.

The legislature having been convened, measures were adopted, not without opposition from those claiming the appellation of the friends of the people, conferring powers on the executive equal to the emergency. These became the subjects of louder clamours and greater irritation. Offers of pardon were disregarded. Renewed and more extensive opposition was excited against the courts of justice, which were in one instance compelled to stipulate to hold no future sessions, and in another to give hostages for the protection of the insurgents. In Taunton, it was deemed necessary to station a body of militia to secure the judges and the jury from personal violence. The discontented, who had previously shown themselves in detached parties, moved to a common point; and at last a body of a thousand insurgents was collected under the command of a late captain in the continental army, who billeted themselves upon the inhabitants, and apprehended every person obnoxious to their views. The necessity of abandoning the lenity which had thus far governed the councils of the state, now became obvious. Orders were given to the militia to march upon certain positions, and the assembled corps were put in motion—one under General Lincoln, the other under General Shephard—to check the progress of the insurrection. These decisive steps were attended with complete success. The insurgents in most instances fled before the military.

Where they made a stand, their resistance was feeble and heartless, and after a few occasional skirmishes, they dispersed and took refuge in the adjacent states. With little hope of success, and without the means of keeping in a body, they soon dwindled into insignificance, and except a few predatory incursions by which the frontiers of the state were harassed, quiet was restored.

In New-Hampshire,\* a similar spirit had been also aroused. In the beginning of eighty-five, the legislature, yielding to the distresses of the people, had enacted a law making every species of property a tender at an appraised value. The creditors consequently withheld their demands, and the debtors neglected payment. Goods and real property being thereby substituted as a medium of exchange, specie was hoarded, credit suspended, and the distress increased. A convention was held which urged upon the government the emission of bills of credit, that should be a legal tender. A plan was formed by the legislature for an issue, to be loaned on landed security, redeemable at a future period, which was submitted to the people; but before any expression of opinion could be obtained, an armed body assembled at Exeter, the seat of government, where the legislature was in session, and demanded an immediate compliance with their terms. The alarmed assembly proposed to consider their complaints; but the senate maintained its dignity. General Sullivan, who was the president, addressed the people, exposing the absurdity of their demands, and avowing his determination, even if the whole state was in favour of the measure, not to yield while they were surrounded by an armed force; and that no consideration of personal danger should compel him to so flagrant a violation of the constitutional rights of the people.

The contumacious mob then beat to arms, loaded their

\* Collections of the New-Hampshire Historical Society.

muskets with ball, and placing sentinels at the doors, held the legislature prisoners throughout the day. At night-fall, Sullivan again addressed them. In reply to his firm harangue, nothing was heard but loud clamours for "*paper money*"—"an equal distribution of property"—"*the annihilation of debts*"—and "*a release of taxes.*" At this moment a drum was heard, and a party came in sight, huzzaing for government. The mob was alarmed, and Sullivan, followed by the legislature, passed unimpeded through its dense columns. He immediately reassembled the legislature in another place, issued orders at midnight for the militia, and a body of two thousand being collected at an early hour, he advanced and addressed the insurgents, drawn up in order of battle. A part yielded, the rest fled, and, except to an attempt to seize the persons of their leaders, no resistance was offered. The contest was soon after transferred from the field to the elections, and, without any diminished cause of discontent, the people settled down in a general submission to the laws. The leaders, Parsons, Shays, and French, threw themselves on the mercy of government, which, with a prudent mildness, was satisfied with their disfranchisement.

It would be an error to pronounce the issue of these events merely fortunate, for where can an instance be adduced of so great and long-continued an excitement, proceeding from such ample causes, among a people just emerging from a civil war, subdued so soon by a reluctant exercise of power, and that power the very people, most of whom were participators in the sufferings which sharpened the edge of discontent?

The ease with which this insurrection was suppressed, may be in part attributed to the influence of a few of the leaders in the revolution, who continued to possess the confidence of the public; but more is to be ascribed to the character of an enlightened and not dense community, where an equal condition and equal forms of government

had produced habits of obedience to, and reverence for, the laws. But it would be not less an error to overlook the fact, that the issue of this controversy is a rare exception to the usual course of such events, and to infer from it, that a civilized society may safely repose upon the uncontrolled virtue and intelligence of its members. The tendency of civilization is to produce inequalities of condition, and in the short period which has elapsed since this rebellion, and notwithstanding the propitious circumstances in which she has been placed, it would be vain at this time to expect, even in Massachusetts, a similar result.

A more extraordinary deduction has been drawn from the tranquil termination of this contest with the laws—that rebellions are salutary; “that the tree of liberty must be watered with blood,”\* and that societies which rely for the preservation of order upon the vigour of government, are unwisely constituted.

Every violent aggression upon constitutional authority is an invasion of the first principle of social institutions; and little permanence or happiness can those institutions hope to enjoy, or to preserve, which for a moment admit the dangerous doctrine, except in the extreme cases which justify a revolution, of a resort to force.

Another inference must be adverted to, because it is known to be the basis upon which a large superstructure of invidious censure upon the people of New-England has been raised—that these scenes prompted in that part of the confederacy a desire for a monarchical form of government. This is an error natural to the region of country in which it was propagated; for where slavery debases all at least below the rank of master, how short is the interval between revolt and ruin; how great the excuse for rigour in the harsh; how little room for lenity in the gentle; how fear-

\* Jefferson's writings.

ful the consequence of awakening the sufferer to a sense of his injuries ; how prone the mind to power ! But there is no analogy in the respective circumstances of the southern and the eastern states. Under less equal forms, rebellion has usually produced some great modification of the political system, either by larger grants of privilege to the subject, or greater concentration of strength in the rulers ; but in New-England, weakness made no sacrifices, power acquired no augmentation, and the insurgents were seen to lay down their arms, not as trembling vassals, reduced to the sway of an imperious master, but as an erring part of the people rejoining the mass, happy to return under the protection of laws which they had shared in framing, and knew they could participate in modifying. There is not an authenticated fact to show, that these events excited a wish for any other than a more efficient but equally free government.

Whether by giving a different direction to the public mind, and offering a new hope of relief, the proposed convention of the states would have prevented these alarming occurrences, it is impossible to determine. The despair of aid from state legislation may have stimulated the people to violence ; but it is rather to be believed that the popular feelings were too much excited, the suffering too great and extensive, to have waited the issue of so slow a process. The rebellious temper of the populace rendered a vigorous exertion of the powers of government necessary ; and it cannot be doubted, that this necessity had much influence in inducing the states to consent to the establishment of the federal constitution.

The prostration of commerce, the poverty and anarchy of the country, the hopeless prospect before them, compelled the people to feel the want of that which Hamilton was the first to indicate as the only resource—"a more perfect union." New-York had been the earliest to pro-

pose a convention of the states. After longer experience, Massachusetts had declared her conviction of its necessity; to which Virginia, eminently jealous of her state sovereignty, was impelled by peculiar circumstances at last to assent.

Her geographical position rendered it extremely difficult to establish an efficient, and at the same time an independent revenue system. This difficulty had early suggested the importance of forming a compact with Maryland, as to the jurisdiction of their confluent waters; and in December, seventeen hundred and seventy-seven, commissioners were appointed by Virginia for this object. The subject was resumed in seventeen hundred and eighty-four, and a similar commission created. Nothing having been effected by them, new commissioners were chosen in the succeeding year, who met the deputies of Maryland at Mount Vernon. There they agreed upon an act regulating the commercial intercourse through the Potomac and Chesapeake, and defining the jurisdiction of each state. But at the moment of framing this compact, they deemed it necessary to extend its provisions so as to authorize the establishment of a naval force to protect these estuaries, and the formation of a mutual tariff. This compact, by the articles of the confederation, required the previous consent of congress. To obviate that difficulty, these deputies recommended to their respective states the appointment of other commissioners with enlarged powers, to whose proceedings the permission of congress was to be solicited.

On the thirteenth of January, seventeen hundred and eighty-six, resolutions passed the legislature of Virginia for a uniformity of duties between the two states, and that commissioners should be chosen to meet annually, if required, to regulate their mutual commercial interests. They were instructed particularly to provide, that foreign



gold should pass at the same rate in both states, and that the same amount of damages should be charged on protested bills of exchange. A few days after, the house of delegates passed a resolution, directing the projected arrangement to be communicated to all the other states, who were invited to send deputies to a general meeting for the precise purpose "of considering how far a uniform system of taxation in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report an act relative to this great object, which, when ratified, would enable the United States, in congress assembled, effectually to provide for the same." Thus it will be seen that Virginia merely contemplated a *commercial arrangement*, falling far short of the policy which New-York and Massachusetts had previously embraced.

Her reluctance in granting, and her repeals of the impost;\* her hostility to a federal judiciary, her jealousy as to the Mississippi;—all leave little room for doubt, that the project of a continental convention to frame a constitution, would at an earlier period have been feebly sustained by her. Washington's circular letter had produced no action on her part, and her councils were swayed by penmen who looked upon an invigoration of the union with jealousy, because the suggestion had emanated from the army, and who, speculating in their closets on the dangers of conferring power, had not considered how much greater were the evils of usurpation, even from "necessity," than those

\* In a letter from R. H. Lee, he states his apprehensions of alterations in the articles of the confederation, that he had "ever been opposed to the five per cent. impost," that he never could agree that congress "shall dictate the mode of taxation, or that the collection shall in any manner be subject to congressional control." He was opposed to the power of regulating trade.—*Life*, v 2, pp 62, 71.

of a large constitutional authority.\* Yet the precedence of that state in this important measure, has been claimed without hesitation, and generally received as a part of American history. It is time that this error, with many others, should be corrected.

Soon after this project was first agitated, Hamilton, whose mind had long laboured with the great design of a national constitution, determined to bring about the co-operation of New-York. It was a part of his plan, that the state legislature should definitively adopt or reject the revenue system of seventeen hundred and eighty-three, and in case of its rejection, should appoint commissioners to attend the commercial convention "Hamilton," Troup relates, "had no idea that the legislature could be prevailed on to adopt the system as recommended by congress, neither had he any partiality for a commercial convention, otherwise than as a stepping stone to a general convention, to form a general constitution. In pursuance of his plan, the late Mr. Duer, the late Colonel Malcom, and myself, were sent to the state legislature as part of the

\* In a letter of Madison to R. H. Lee, he observes, "*I have not yet found leisure to scan the project of a continental convention with so close an eye as to have made up any observations worthy of being mentioned to you. In general, I hold it for a maxim, that the union of the states is essential for their safety against foreign danger and internal contention, and that the perpetuity and efficacy of the present system cannot be confided in. The question therefore is, in what mode and at what moment the experiment for supplying the defects ought to be made. The answer to this question cannot be made without a knowledge, greater than I possess, of the temper and views of the different states. Virginia seems, I think, to have excellent dispositions towards the confederacy, but her assent or dissent to such a proposition, would probably depend much upon the chance of having no opponent capable of rousing the jealousies and prejudices of the assembly against innovations, particularly such as will derogate from their own power and importance. Should a view of the other states present no objections against the experiment, individually, I would wish none to be presupposed here*"—2 Life of R. H. Lee, p 220 Dec 25, 1784

city delegation, and we were to make every possible effort to accomplish Hamilton's objects.

"Duer was a man of commanding eloquence. We went to the legislature, and pressed totis viribus the grant of the impost agreeably to the requisition of congress. We failed in obtaining it. The resolutions of Virginia were communicated by Governor Clinton, on the fourteenth of March, seventeen hundred and eighty-six. We went all our strength in the appointment of commissioners to attend the commercial convention, in which we were successful. The commissioners were instructed to report their proceedings to the next legislature: Hamilton was appointed one of them. Thus it was, that he was the principal instrument to turn this state to a course of policy that saved our country from incalculable mischiefs, if not from total ruin."

While this subject was in agitation in other states, Governor Bowdoin was using all his influence to incite the people of Massachusetts to the promotion of their true interests. In a special message, he urged upon the legislature the protection of manufactures, stating that the looms were idle, in consequence of excessive importations. On a subsequent occasion, after descanting upon the importance of conferring the necessary powers upon congress, he placed before them the serious inquiry, "Shall the union cease to exist?" and as soon as he received the circular of Virginia, he recommended the appointment of commissioners to the commercial convention, which the legislature approved. New-Jersey, Delaware, and Pennsylvania co-operated in the measure. "The delegates appointed by New-York were Hamilton, Duane, Robert R. Livingston, Robert C. Livingston, Benson, and Gansevoort. Gansevoort declined the appointment. Duane was prevented attending by indisposition, Robert R. Livingston by business. Hamilton and Benson (then attorney-general of

the state) proceeded to Annapolis, where they met the other commissioners." After a short interview, "a committee was appointed to prepare an address to the states, which was reported and agreed to,—the whole in the course of three or four days, and we separated. The draft was by Hamilton, although not formally one of the committee."\*

In the draft as originally framed, Hamilton had exhibited frankly and at large the condition of the states, and the necessity of an efficient government. But it was thought,† from the sentiments of some of the delegates, and the lukewarmness exhibited by the non-attendance of so many states, that his statements were too explicit, and he reduced the address to the form in which it now appears, signed by Governor Dickinson, as chairman of the meeting.

"To the honourable the legislatures of Virginia, Delaware, Pennsylvania, and New-York.

"The commissioners from the said states respectively assembled at Annapolis, humbly beg leave to report, That pursuant to their several appointments, they met at Annapolis, in the state of Maryland, on the eleventh day of September, instant, and having proceeded to a communication of their powers, they found that the states of New-York, Pennsylvania, and Virginia, had in substance, and nearly in the same terms, authorized their respective commissioners to meet such commissioners as were or might be appointed by the other states in the union, at such time and place as should be agreed upon by the said commissioners, to take into consideration the trade and commerce

\* Memoir published by Judge Benson

† The governor, Edmund Randolph, objected to the report as first framed. Madison then observed to Hamilton, "You had better yield to this man, for otherwise all Virginia will be against you."

of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several states such an act relative to this great object, as, when unanimously ratified by them, would enable the United States in congress assembled effectually to provide for the same.

“That the state of Delaware had given similar powers to their commissioners; with this difference only, that the act to be framed in virtue of these powers, is required to be reported ‘to the United States in congress assembled, to be agreed to by them, and confirmed by the legislature of every state.’

“That the state of New-Jersey had enlarged the object of their appointment, empowering their commissioners ‘to consider how far an uniform system in their commercial regulations, and *other* important matters, might be necessary to the common interest and permanent harmony of the several states; and to report such an act on the subject, as, when ratified by them, would enable the United States in congress assembled effectually to provide for the exigencies of the union.’

“That appointments of commissioners have also been made by the states of New-Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom, however, have attended. But that no information has been received by your commissioners of any appointment having been made by the states of Connecticut, Maryland, South Carolina, or Georgia. That the express terms of the powers to your commissioners supposing a deputation from all the states, and having for their object the trade and commerce of the United States, your commissioners did not conceive it advisable to proceed to the business of their mission under the circumstance of so partial and defective a representation.

“Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your commissioners cannot forbear to indulge an expression of their earnest and unanimous wish that speedy measures may be taken to effect a general meeting of the states in a future convention for the same, and such other purposes, as the situation of public affairs may be found to require

“If in expressing this wish, or intimating any other sentiment, your commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive a favourable construction. In this persuasion, your commissioners submit an opinion that the idea of extending the powers of their deputies to other objects than those of commerce, which had been adopted by the state of New-Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the federal system. That there are important defects in the system of the federal government, is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs foreign and domestic, as may reasonably be supposed

to merit a deliberate and candid discussion in some mode which will unite the sentiments and councils of all the states.

“In the choice of the mode, your commissioners are of the opinion that a CONVENTION of deputies from the different states for the special and sole purpose of entering into this investigation, and digesting a plan of supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized. Your commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future convention with those enlarged powers is founded, as it would be an intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed.

“They are, however, of a nature so serious, as, in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the confederacy. Under this impression, your commissioners with the most respectful deference beg leave to suggest their unanimous conviction, that it may effectually tend to advance the interests of the union, if the states by which they have been respectively delegated would concur themselves, and use their endeavours to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government *adequate to the exigencies of the union*, and to report such an act for that purpose to the United States in congress assembled, as, when agreed to by them

and afterwards confirmed by the legislature of every state, will effectually provide for the same.

“Though your commissioners could not with propriety address these observations and sentiments to any but the states they have the honour to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this report to the United States in congress assembled, and to the executives of the other states.

“Annapolis, September 14th, 1786 ”



## CHAPTER XXII.

[1786]

It has been seen that the conferring on congress the power of levying a *national impost*, was the great dividing question on which the two parties that existed in America were arrayed. By the friends of a general and enlarged policy, or, as they were then styled, of "continental politics," this measure was regarded as one involving the fate of the country, for without such a power it was obvious that the confederation, feeble and inadequate as it had proved, could not be longer preserved. Its opponents were those who had coalesced, either from disappointment in not having acquired an influence in the general councils, from a desire to retain powers in the states that might be wielded for the gratification of their ambition, from an undefined or pretended apprehension of the dangers to their liberties which might result from so large a confidence as the control of the national funds, and in certain states from a calculation of the partial benefits to be derived from peculiar circumstances of more extensive territory, favourable position, and natural advantages. These lent themselves to the most absurd suspicions, deprecated any advance towards this great object as an approach to a gulf in which every vestige of liberty would be merged, and appealing to each narrow passion, the offspring of inconsiderateness, ignorance, or pride, gratified their vanity, and increased their influence, by being esteemed the zealous watchmen of liberty, and especial guardians of state rights. This party was the proper growth of the articles of confederation.

It had acquired a complete ascendancy throughout the country, thus affording another proof that false principles, while they hasten decay in the system into which they enter, give a noxious vitality to the parasitic plants which flourish in the progress of its corruption

That ascendancy was inconsistent with the preservation of the union ; nor should we know from its effects at this time that the union existed, but that the pageantry of a congress was still kept up The members chosen to meet in November, seventeen hundred and eighty-five, did not assemble until February, seventeen hundred and eighty-six. Their first deliberations related to the finances The report of a committee showed that the requisitions for the four preceding years a little exceeded seven millions of dollars ; that the total receipts were rather more than one-third of this sum, of which less than one-tenth had been collected within the last fourteen months ; that the means for discharging the interest on the foreign debt would have been inadequate, but for the unappropriated residue of the Dutch loan ; that further loans could not be obtained ; that the emission of bills of credit was hopeless ; that the only remaining resource was the public lands—but public securities being receivable for them, they could only aid in reducing the public debt ; and that, after the maturest consideration, they were unable to devise any other than the revenue system of seventeen hundred and eighty-three. It then proceeded to state, that seven states had complied with it in part ; that Pennsylvania and Delaware had only granted it provisionally, and that Rhode Island, New-York, Maryland, and Georgia, had not decided in favour of any part of a system “ so long since and so repeatedly presented for their adoption ” It closed with the following impressive appeal :—“ The committee observe with great concern that the security of the navigation and commerce of the citizens of these states from the Barbary powers ; the pro-

tection of the frontier inhabitants from the savages ; the immediate establishment of military magazines in different parts of the union, rendered indispensable by the principles of public safety , the maintenance of the federal government at home, and the support of the public servants abroad ,—each and all depend upon the contributions of the states under the annual requisitions of congress The moneys essentially necessary for these important objects will so far exceed the sums formerly collected from the states by taxes, that no hope can be indulged of being able from that source to make any remittances for the discharge of foreign engagements.

“Thus circumstanced, after the most solemn deliberation, and under the fullest conviction that the public embarrassments are such as above represented, and that they are daily increasing, the committee are of opinion that it has become the duty of congress to declare most explicitly, that the crisis has arrived when the people of these United States, by whose will and for whose benefit the federal government was instituted, must decide whether they will support their rank as a nation by maintaining the public faith at home and abroad, or whether, for want of timely exertion in establishing a general revenue, and thereby giving strength to the confederacy, they will hazard, not only the existence of the union, but of those great and invaluable privileges for which they have so arduously and so honourably contended ”

This strong language was followed by resolutions, in which, to efface the erroneous impressions produced by Jefferson’s scheme of counterbalancing deficiencies, and “ in order that congress may remain wholly acquitted from every imputation of a want of attention to the interests and welfare of those whom they represent,” they declare—First, that the requisitions of seventeen hundred and eighty-four and eighty-five, cannot be considered as the

establishment of a system of general revenue in opposition to that recommended in seventeen hundred and eighty-three ; second, they recommend to the delinquent states an accession to that system in all its parts ; and last, proclaim, that whilst congress are denied the means of satisfying those engagements which they have constitutionally entered into for the common benefit of the union, they hold it their duty to warn their constituents that the most fatal evils will inevitably flow from a breach of public faith pledged by solemn contract, and a violation of those principles of justice which are the only solid basis of the honour and prosperity of nations.”\*

Although Pennsylvania and Delaware had not complied strictly with the system of seventeen hundred and eighty-three, it became apparent that the non-concurrence of New-York was the only serious obstacle to its establishment. Under these circumstances, the public attention in that state was wholly devoted to this subject.

A strong memorial to the legislature from the pen of Hamilton was widely circulated. It stated, “that the community had seen with peculiar regret the delay which had hitherto attended the adoption of the revenue system ; that the anxiety which they had all along felt from motives of a more general nature, is at the present juncture increased by this particular consideration, that the state of New-York now stands almost alone, in a non-compliance with a measure in which the sentiments and wishes of the union at large appear to unite, and by a further delay may render itself responsible for consequences too serious not to affect every considerate man ; that all the considerations important to a state, all the motives of public honour, faith, reputation, interest, and safety, conspire to urge a compli-

\* R. King was chairman of this committee, and it is to be presumed was the author of this important document.

ance with that measure—that government without revenue cannot subsist—that the mode provided in the confederation for supplying the treasury of the United States has in experiment been found inadequate—that any objection to it as a measure not warranted by the confederation is refuted by the thirteenth article, which provides that alterations may be made, if agreed to by congress and confirmed by the legislatures of each state ; and the conduct of this state itself in adopting the proposed change of the eighth article is a precedent in which we find the principle reduced to practice, and affords a complete answer to every pretence of the revenue system being unconstitutional. That as to danger in vesting the United States with these funds, your memorialists consider their interests and liberties as not less safe in the hands of their fellow-citizens delegated to represent them for one year in congress, than in the hands of their fellow-citizens delegated to represent them for one, or four years, in the senate and assembly of this state”—“ That government implies trust, and every government must be trusted so far as it is necessary to enable it to attain the ends for which it is instituted, without which must result insult and oppression from abroad, confusion and convulsion at home.”

The public men throughout the state took an open stand on this question ; the newspapers were filled with discussions of its merits,\* and the elections turned solely on this point.

The head of the opposition was the governor, whose influence, after an administration of nine years, had become almost irresistible. In the southern district, though opposed by the commercial members of the community, whose

\* The most noticed of the writings against the grant of the impost, were a series of numbers signed “ Rough Hewer,” of which the author was Abraham Yates, a member of the legislature and a zealous partisan of Clinton

hopes had centred upon Hamilton ; Clinton was supported by a combination of interests—by the most violent of the whigs, and the most violent of the tories, who had become zealous whigs. In the interior of the state his ascendancy was limited only by the opposition of a few intelligent men on the eastern borders of the Hudson, guided by Chancellor Livingston, and by the active and unceasing exertions of General Schuyler in the northern and western districts, where he was yet recollected as their most energetic protector and enlightened friend.

To judge merely from the official communications of Clinton, the inference would be drawn, that though not a zealous champion, he was a decided friend to the federal system ; but the measures which marked the policy of the state, and which were directed by him, indicated very different purposes.

In pursuance of the recommendation of congress, New-York, on the nineteenth of March, seventeen hundred and eighty-one, passed an act which, after granting the duties to that body, provided, “ that they should be levied and collected in such manner and form, and under such pains, penalties, and regulations, *and by such officers, as congress should from time to time make, order, direct, and appoint.*”

Soon, however, after the indications of peace, the policy of the state changed. The act of seventeen hundred and eighty-one was repealed, and on the fifteenth March, seventeen hundred and eighty-three, a law was enacted granting the duties ; but departing from the principles which had prompted this measure at its inception, and which prevailed during a period of danger, directed them to be collected *by the officers and under the authority of the state.* This law, combined with other circumstances, induced congress to recommend the system that was adopted on the eighteenth of March, seventeen hundred and eighty-

three, which yielded the appointment of the revenue officers to the states, but rendered them amenable to, and removable by, the United States\* alone.

Early in the year seventeen hundred and eighty-four, a motion was made in the legislature of New-York, urging the abolition of the officers of superintendent of finance and of continental receiver, which was followed by the acts establishing a customhouse and a revenue system.

The immense and improvident speculations made on the return of peace, poured into the coffers of that state a large revenue. This was subsequently increased by the navigation acts of other states, which rendered New-York the entrepot of the whole region east of the Delaware, and presented to her tempting prospects of future wealth. Blinded by these adventitious circumstances to the superior advantages to be derived from the general prosperity of the whole union, the idea of state aggrandizement engrossed the thoughts of Clinton, who, had the desire of establishing a separate government ever conflicted in his mind with a more comprehensive patriotism, would have regarded this as the great source of influence and power.

To whatever cause it may be attributed, it became the settled policy of New-York to defeat the proposition for a national revenue. A measure conforming with the recommendation of congress was proposed in the legislature in seventeen hundred and eighty-four, and failed. It was

\* In a letter to Hamilton, Schuyler remarks, May 4th, 1783: "Although our legislature seems still inclined to confer powers on congress adequate to the proper discharge of the great duties of the sovereign council of these states, yet I perceive with pain that some, chagrined at disappointment, are already attempting to inculcate a contrary principle, and I fear it will gain too deep a root to be eradicated, until such confusion prevails as will make men deeply feel the necessity of not retaining so much sovereignty in the states individually."

again brought forward in seventeen hundred and eighty-five, and again failed by two votes in the senate.

At the close of the session of seventeen hundred and eighty-six, in which the exertions of Schuyler to induce the grant were most conspicuous, a law was enacted giving the revenue to congress, but reserving to the state "the sole power of levying and collecting" the duties; the conferring of which power on congress, was an indispensable and express condition of the acts of some of the other states. Instead of making the collectors amenable, and removable by congress, it subjected them to the exclusive jurisdiction of the state courts.

It also rendered the duties payable in the bills of credit of the state, and thus so entirely contravened the plan of seventeen hundred and eighty-three, as to be equivalent to its rejection. This enactment was defended by the argument that congress, being a single body, and consequently without checks, would be apt to misapply the money arising from it.

All hope had, in the mean time, centred in this question; and palsied for the want of resources, congress is seen debating Indian treaties, consulting measures to suppress their hostilities, discussing the inquiry whether a member could, without permission from that body or from his state withdraw from his seat, and suspending all action, waiting the decision of New-York.\*

\* The confederation required nine states to form a quorum for every essential purpose. Each state had one vote—no state could be represented by less than two members. The withdrawal therefore of a member could suspend its functions, and yet *New-York*, Maryland, and Virginia, affirmed the absolute right to withdraw, and New-Hampshire, Rhode Island, Connecticut, and Georgia were divided. *For the right*—William Grayson, John Haring, Harrison, Henry, Hindman, Houston, Lavermore, Miller, Mitchell, James Monroe, Melancton Smith, against it—Bayard, Bloodworth, Dane, Few, N Gorham, Hornblower, *Dr. Huger*, William Samuel Johnston, Rufus King, Lee, Long, Manning, Parker, Petit, Charles Pinckney, Sedgwick, Symmes, White



Perceiving that no benefit could be derived from the law recently passed by this state; that if acceded to, the acts of twelve adopting states (for Rhode Island had meanwhile concurred) would, by their conditions, which required the concurrence of all the states, become void, that the provision which rendered the duties payable in bills of credit was most pernicious, as it would, on the same principle, admit all the paper money of the other states at various rates of depreciation, thus reducing the revenue, producing an inequality in the public burdens, and deterring the states averse from paper money from engaging in the measure—congress treated it as a nullity.

Feeling deeply their humiliating condition in being unable to meet the claims of foreigners who had advanced money to prosecute the war, and to discharge the *interest* on the foreign debt without new loans in Europe, and thereby compounding it, they passed a resolution requesting Governor Clinton to convene the legislature for the purpose of submitting this subject again to its consideration. To this application, involving such momentous consequences, Clinton replied by letter, stating that “he entertained the highest deference and respect for the authority of congress, and that it would afford him the greatest pleasure to have it in his power to comply with their recommendations, but that he had not the power to convene the legislature before the time fixed by law for their stated meeting, except upon ‘*extraordinary occasions*,’ and as the present business had already been particularly laid before them, and so recently as at their last session received their determination, it cannot come within that description.”

Soon after receiving this communication, congress then sitting at New-York, adopted a series of resolutions, declaring that the act of New-York was not a compliance with the general plan. “That the present critical and em-

barrassed state of the finances was such as to require that the system of impost should be carried into immediate effect ; that they consider this ‘an occasion sufficiently important and extraordinary’ for the convening of the legislature, and ‘earnestly’ recommend that it should be ‘immediately called.” Clinton was immovable. This earnest and solemn appeal of the confederacy was disregarded, and the hope of establishing a general revenue was almost abandoned.

While the dignity of the nation was thus prostrated before the executive of a single state, difficulties, the consequences of recent example, were pending with several others. New-Jersey, wearied with fruitless efforts to inculcate the benefits of a national system, and jealous of the commercial prosperity of New-York, early in this year had resorted to decisive measures. She passed a resolution (reciting as a reason for it the delinquency of other states) by which she refused a compliance with the requisition of congress for her quota, “until all the states in the union had complied with the revenue system of seventeen hundred and eighty-three, or until states having peculiar commercial advantages should forbear a system of partial legislation.” This formidable decision alarmed the nation, and demanded the immediate attention of congress, who sent a deputation to remonstrate with that state. After an able address from each of the delegates, showing the necessity of union to the general happiness of all its members, but especially to the smaller states, the legislature rescinded their resolution, but declared that the requisition had no binding force.

Pennsylvania claimed a set-off against part of her quota, and a committee was appointed to confer with her legislature. A similar claim was, after much debate, conceded to South Carolina. Another committee was directed to repair to Connecticut, New-Jersey, and North Carolina,

and an address was made to New-Hampshire and Maryland, urging upon them a full and immediate compliance with the last requisition. Was this a government?

These obstacles indicated the necessity of an adjustment of accounts with the several states, and an ordinance was framed for that purpose. Another ordinance before recommended was passed, of much *prospective* importance. It was for the establishment of a mint; the standard of gold and silver, and the money of account in a decimal ratio, having been previously fixed.

While congress were thus engaged, the insurrection of Massachusetts broke upon them. After much delay, they, in secret session, made a report strongly indicative of their feebleness and their fears. Having stated that unless speedy and effectual measures were taken to suppress the designs of the insurgents, they will possess themselves of the arsenal at Springfield, subvert the government, and not only reduce that commonwealth to a state of anarchy and confusion, but probably involve the United States in the calamity of a civil war, it declared their obligations to restore the authority of the state, and to protect the public property, and that for these purposes a body of troops should be immediately raised, but that the causes of raising them ought not to be publicly assigned, and that they had, in a separate report, on the intelligence from the western country, recommended the augmentation of the troops in the service of the United States. By this report a legionary corps was ordered to be enlisted for three years, principally in New-England.

Thus did an emergency, which every government should have been empowered to meet, drive congress to a usurpation upon a false pretext; for where is to be found the authority in the articles of the confederation to raise a military force for such a purpose, and what was there to prevent an increase of its number, and its permanent existence?

The only security against this usurpation of power was the want of means; but this want involved the very danger, for, while acting upon the necessity of the measure, congress declared, "that in the present embarrassments of the federal finances, they would not *hazard* the *perilous* step of putting arms into the hands of men, whose fidelity must in some degree depend on the faithful payment of their wages, had they not the fullest confidence, from authentic and respectable information, in the most liberal exertions of the money-holders in the state of Massachusetts and the other states, in filling the loans authorized" for that purpose.

The suppression of the insurrection by her own militia, leaves it only a subject for speculation what would have been the consequences of an invasion, by the confederacy, of so populous, so warlike, and then so jealous a state.

The friends of the union in New-York had in the mean time determined to make another and a final effort. The popularity of Hamilton, it was hoped, might have influence; and while General Schuyler was brought forward as a candidate for the senate, Hamilton was put in nomination for the assembly. His election was earnestly opposed—opposed by the men whose cupidity he had exposed in seventeen hundred and eighty-four, and who, identified with the state policy of Clinton, as leaders of the democratic party, regarded him as a formidable adversary to their narrow and selfish politics. But serious apprehensions had seized the community as to the future. They saw in the discords and the weakness of the confederacy the fulfilment of all his prophecies, and they looked to him as their last hope of changing the vicious direction which had been given to the councils of the state. He was elected \*

\* On the eve of this election a letter was received by him from a tory merchant, asking his influence to obtain legislative relief. In his reply he states,

The legislature opened its session in January, seventeen hundred and eighty-seven, at the city of New-York. The speech from the governor, after alluding to the annual appointment of state officers, from which so large a share of his influence was derived, adverted to the requisitions for the service of the year, and stated his confidence that the dispositions of the legislature being truly federal, would induce a speedy compliance with a measure so essential to the national support and credit. The representatives were informed of the resolutions of congress, expressing their sense of the act granting the impost, and requesting an immediate call of the legislature, whereby the revenue system of seventeen hundred and eighty-three would be brought to their view—"a subject which had been repeatedly submitted to them, and must be well understood."

The correspondence which had recently passed on that subject was laid before them, with a declaration, "that a regard to their excellent constitution, and an anxiety to preserve unimpaired the right of free deliberation in matters not stipulated by the confederation, had restrained him from convening them at an earlier period." The ad-

"that he would not be understood to declare any opinion concerning the principles of the bill," and remarks, "I make this observation from that spirit of candour which I hope will always direct my conduct. I am aware that I have been represented as an enemy to the wishes of what you call your corps. If by this is meant that I do not feel as much as any man not immediately interested for the distresses of those merchants who have been in a great measure the victims of the revolution, the supposition does not do justice either to my head or my heart. But if it means that I have always viewed the mode of relieving them as a matter of peculiar delicacy and difficulty, it is well founded.

"I should have thought it unnecessary to enter into this explanation, were it not that I am held up as a candidate at the ensuing election, and would not wish that the step I have taken in respect to your letter should be considered as implying more than it does, for I would never wish to conciliate at the expense of candour, on the other hand, I confide in your liberality not to infer more than I intend from the explanation I have given you."

justment of the territorial controversies with Massachusetts and Pennsylvania was mentioned, and the speech concluded by calling the attention of the legislature to local topics.

The address in reply to the speech was referred to a committee, of which Hamilton was a member, and was reported by him. It was a mere echo of the speech on all subjects, except as to the request of congress to convene the legislature, which was passed by in silence. On being reported to the house, a motion was made by the speaker to amend it, by expressing their approbation of the governor's conduct in not convening the legislature at an earlier period than that fixed by law; he at the same time disclaiming all hostility to the impost. This motion produced the effect which had been sought to be avoided, and called up a long and vehement debate. While the friends of the union expressed in general terms a dissent from the views of the governor, feeling themselves in a minority, they sedulously endeavoured to prevent all discussion of this topic, seeing that it had been thrown in as an apple of discord; but the friends of the governor, who were guided with an adroit and subtle policy, seized upon this occasion to kindle an excitement, and to rouse all the hostile feelings of the states rights party.

The speaker then proposed to withdraw the motion, but it was insisted that it could not be withdrawn. That no ill consequences could arise from a decision; that it was only a question whether there was such a pressing necessity as to authorize the governor to convene the legislature. That if the doctrine that the governor was bound to comply with a requisition of congress on this subject was sustained, it was impossible to tell where it would end. That congress might, by repeated requisitions, perhaps once a month, tease and weary the legislature into a compliance with their measures; an apprehension not exaggerated, for such had been the practice of the former government.

Several propositions were made to get rid of the motion for an amendment, and it was at last agreed that the committee should rise and report; Colonel Hamilton stating, "that he would reserve himself on this subject until it came again before them, when he hoped to be enabled to offer such arguments as would strike with conviction the candid part of the house."

This question was brought forward on the nineteenth of January, when an amendment was proposed by General Malcolm, as a substitute for that of the speaker, the object of which was to avoid a direct expression of opinion as to the governor's conduct, and to place his justification on the ground of the extraordinary expense an extra session would have produced. This amendment was resisted with great ingenuity and art. An attempt was made to show that silence would be in effect a censure upon the governor, while approbation of his conduct did not necessarily reflect upon that of congress,—that this motion was in reality an attempt to debar them from the right of declaring their sentiments; and the house was asked whether, if it was necessary, they were afraid to justify their governor?

A comparison was drawn between the former and present government, and an absurd analogy sought to be shown to the attempt of the British government to levy ship-money, which was finally and effectually resisted by the English commons. It was contended that if to the right of making peace and war, of raising fleets and armies, was superadded that of convening at pleasure the state legislatures, and of exercising such a prerogative, the issue no man could foretell;—that congress was an irresponsible body, and that the governor was accountable to the state;—that this was not the "extraordinary occasion" contemplated by the constitution; and as they were now ready to approve the governor's conduct, they should have been

as ready, had his course been different, to have censured it.

The question was then called as to the substitute, when Hamilton, who had previously spoken on the point of order, arose. This body was, with few exceptions, composed of respectable individuals, who had enjoyed small advantages of education, and who regarded with jealousy all oratorical embellishment. Having previously felt its pulse, and only anxious to carry this great measure, on the right decision of which such vast consequences depended, Hamilton conformed his effort to the character of the assembly, and addressed them in the following conciliatory and moderate tone. After a few preliminary observations, he proceeded to remark :\*

“This now leads us to examine the important question presented to us by the proposed amendment. For my own part, I have seen with regret the progress of this business, and it was my earnest wish to have avoided the present discussion. I saw with regret the first application of congress to the governor, because it was easy to perceive that it involved a delicate dilemma. Either the governor, from considerations of inconvenience, might refuse to call the assembly, which would derogate from the respect due to congress ; or he might call them, and by being brought together at an unreasonable period, before the time appointed by law for the purpose, they would meet with reluctance, and perhaps with a disposition less favourable than might be wished to the views of congress themselves. I saw with equal regret the next step of the business. If a conference had been desired with congress, it might have been had—circumstances might have been explained, rea-

\* All of these speeches are reported by Childs, the reporter of the debates in the New-York convention. They are very imperfect, and generally in the language the reporter would himself have used.



sons might have been assigned satisfactory to them for not calling the legislature. The affair might have been compromised. But instead of this, the governor thought proper to answer by a flat denial, founded on a constitutional impediment, and an idea of the invasion of the right of free deliberation was brought into view. I earnestly wished the matter to have rested here. I might appeal to gentlemen in this house, and particularly to the honourable member who is so zealous in support of the amendment, that before the speech appeared, I discovered a solicitude that by passing the subject over in silence, it might not give occasion to the present discussion. It however came before us in a form very different from that which I should have thought advisable, for there was no need of an appeal to the legislature. The next step was to appoint a committee to prepare an answer to the speech. It fell to my lot to be a member of that committee; my object still was to avoid the interference of this house in a matter about which there was a difference of opinion between the United States and the governor of this state on constitutional ground. The best way to effect this, was to frame the answer in the most general terms. This was done; not a word is said *even* about the revenue system, which occasioned the request of congress to convene the legislature. The answer is generally, that the house will take into consideration the different acts of congress, and make such provisions as appear to them compatible with the abilities and constitution of the state. By not touching at all on the topic connected with the origin of the controversy, I thought we might safely be silent without any implication of censure on the governor. It was neither my wish to condemn nor to approve. I was only desirous of avoiding an interference in a constitutional question, which belonged entirely to the province of the executive authority of the state, and about which I knew there would be a differ-

ence of opinion, even in this house I submit it to the house, whether this was not a prudent course, and whether it is not to be lamented that the proposed amendment forces the discussion upon us. Constitutional questions are always delicate; they should never be touched but from necessity.

“But though I shall be readily acquitted of having had any agency in bringing the house into this disagreeable situation, since the question is brought forward, I shall with freedom meet the discussion. This my duty demands from me; and whoever may be affected by it, I shall proceed under an impression that my constituents expect from me the free exercise of my judgment, and the free declaration of my sentiments on the matters deliberated upon in this house.

“The question by the honourable member on my right, has been wrongly stated. He says it is this—whether a request of congress to convene the legislature is *conclusive* upon the governor of the state, or whether a bare intimation of that honourable body lays him under a constitutional necessity of convening the legislature? But this is not the true question. From the shape in which the business comes before us, the inquiry truly is—whether a solemn application of the United States to the executive of this state ‘convene the legislature for the purpose of deliberating on a matter which is considered by that body as of essential importance to the nation, and which has been viewed in a similar light by most of the other states individually, is such an extraordinary occasion as left the governor under no *constitutional impediment* to a compliance? and it may be added, whether that application, under all the circumstances, was an attempt to invade the freedom of deliberation in this house?

“Here let me ask, what does the constitution say upon the subject? Simply this—that the governor ‘shall have

power to convene the assembly and senate on extraordinary occasions’

“But what is an extraordinary occasion? what circumstances are to concur, what ingredients combine, to constitute one? What general rule can be imagined by which to define the precise meaning of these vague terms, and draw the line between an ordinary and an extraordinary occasion? Will the gentleman on my right furnish us with such a criterion? Profoundly skilled as he is in law, (at least in the local laws of this state,) I fancy it will be difficult for him to invent one that will suit his present purpose. Let him consult his law books: they will not relieve his embarrassment. It is easy to see the clause allows the greatest latitude to opinion. What one may think a very extraordinary occasion, another may think a very ordinary one, according to his bias, his interest, or his intellect. If there is any rule at all, it is this—the governor shall not call the legislature with a view to the ordinary details of the state administration. Whatever does not fall within this description, and has any pretensions to national importance in any view, leaves him at liberty to exercise the discretion vested in him by the constitution. There is, at least, no constitutional bar in the way.

“The United States are intrusted with the management of the general concerns and interests of the community—they have the power of war and peace, they have the power of treaty.

“Our affairs with respect to foreign nations are left to their direction. We must entertain very diminutive ideas of the government of the union, to conceive that their earnest call on a subject which they deem of great national magnitude, which affects their engagements with two respectable foreign powers, France and the United Netherlands, which relates to the preservation of their faith at home and abroad, is not such an occasion as would justify

the executive, upon the terms of the constitution, in convening the legislature. If this doctrine is maintained, where will it lead to—what kind of emergency must exist before the constitution will authorize the governor to call the legislature? Is the preservation of our national faith a matter of such trivial moment? Is the fulfilment of the public engagements domestic and foreign of no consequence? Must we wait for the fleets of the United Netherlands or of France to enforce the observance of them, before the executive will be at liberty to give the legislature an opportunity of deliberating on the means of their just demands? This is straining the indefinite words of the constitution to a most unreasonable extreme. It would be a tenable position to say that the call of the United States is alone sufficient to satisfy the idea of an extraordinary occasion. It is easy to conceive, that such a posture of European affairs might exist, as would render it necessary to convene the different legislatures to adopt measures for the public safety, and at the same time inexpedient to disclose the object till they were assembled. Will we say that congress would be bound to communicate the object of their call to the executive of every state? or that the executive of this state, in complying with their request, would be guilty of a violation of the constitution? But the present case is not that of a mere general request; it is specifically to deliberate upon an object of acknowledged importance in one view or another. On one hand it is alleged to be a measure essential to the honour, interest, and perhaps the existence of the union, on the other, it is said to be on principles subversive of the constitution and dangerous to the liberty of the subject. It is, therefore, a matter of delicacy and moment, and the earnest call of the union to have it considered cannot fall within the notion of so common, so ordinary an occasion, as would *prohibit* the executive from summoning a meeting

of the legislature. The only argument urged to denominate it such, is that it had been recently decided on by the legislature. But there is an evident fallacy in this position, the call was addressed to a new and different body, *totally different* in the contemplation of the constitution, and *materially* different in fact with respect to the members who compose it. A large proportion of the members of the present house were not members of the last. For aught that either congress or the governor could officially know, there might have been a total change in the individuals, and, therefore, a total difference in the sentiments. No inference, of course, could be fairly drawn from the conduct of the last legislature to that of the present. Indeed, however it might be wished to prepossess the minds of the members of the former house with a contrary idea, it is plain that there is no necessary connection between what they did at that time, and what it may be proper for them to do now. The act of the last session proves the conviction of the house then, that the grant of the impost was an eligible measure. Many of the members were led to suppose that it would answer the purpose, and might have been accepted by congress. If the experiment has shown that they were mistaken in their expectations, and if it should appear to them that congress could not for good reasons accept it, the same motives which induce them to the grant already made, would determine them to consent to such alterations as would accommodate it to the views of congress and the other states, and make it practicable to carry the system into execution.

“It may be observed, that as congress accompanied their request with an explanation of the object, they by that mode of proceeding submitted the whole matter to the discretion of the governor, to act according to the estimate formed in his own mind of its importance. It is not denied the governor had a discretion upon the occasion.

It is not contended, that he was under a constitutional necessity to convene the legislature. The resolution of congress itself does not imply or intimate this. They do not pretend to require, they only earnestly recommend. The governor might at his peril refuse; responsible, however, for any ill consequences that might have attended his refusal. But what is contended for is, that the call of the United States, under all circumstances, was sufficient to satisfy the terms of the constitution empowering him to convene the legislature on extraordinary occasions, and left him at full liberty to comply.

“The admission of his discretion does not admit that it was properly exercised, nor does it admit that the footing upon which he placed his refusal was proper. It does not admit that the constitution interposed an obstacle in his way, or that the request of congress implied any thing hostile to the right of free deliberation.

“This is the aspect under which the business presents itself to our consideration, as well from the correspondence between congress and the governor, as from the manner in which it is ushered to us in the speech. A general approbation of his conduct, is an approbation of the principle by which it is professed to have been actuated.

“Are we ready to say that the constitution would have been violated by a compliance? Are we ready to say that the call upon us to *deliberate* is an attempt to infringe the *freedom of deliberation*? If we are not ready to say both, we must reject the amendment. In particular, I think it must strike us all that there is something singularly forced in intimating, that an application of congress to the governor of the state to convene a new legislature to consider a very important national subject, has any thing in it dangerous to the freedom of our deliberations. I flatter myself we should all have felt ourselves as much at liberty to have pursued our sentiments, if we had met upon an ex-

traordinary call, as we now do when met according to our own appointment.

“There yet remains an important light in which the subject merits consideration; I mean as it respects the executive authority of the state itself. By deciding that the application of congress, upon which the debate turns, was not such an extraordinary occasion as left the governor at liberty to call the legislature, we may form a precedent of a very dangerous tendency; we may put a sense on the constitution very different from the true meaning of it, and may fetter the present or a future executive with very inconvenient restraints. A few more such precedents may tie up the hands of a governor in such a manner as would either oblige him to act at an extreme peril, or to omit acting when public exigencies required it. The mere sense of one governor would be no precedent for his successor; but that sense approved by both houses of the legislature, would become a rule of conduct. Suppose a few more precedents of the kind on different combinations of circumstances equally strong, and let us ask ourselves what would be the situation of a governor whenever he came to deliberate on the propriety of exercising the discretion in this respect vested in him by the constitution? Would he not be apt to act with a degree of caution, or rather timidity, which in certain emergencies might be productive of very pernicious consequences? A mere intimation of the constitution to him not to call the legislature in their recess upon every *trifling affair*, which is its true import, would be turned into an injunction not to do so but upon occasions of the *last necessity*.

“We see, therefore, that the question upon which we are pressed to decide, is not less delicate, as it respects the constitution of the state itself, than as it respects the union; and that in every possible view it is most prudent to avoid the determination. Let the conduct of the governor stand

on its own merits. If he was right, our approbation will not make him more right. If he was wrong, it would be improper to give sanction to his error.

“Several things have been said in the debate which have no connection with it; but to prevent their making improper impressions, it may not be amiss to take some notice of them. The danger of a power in congress to compel the convening of the legislature at their pleasure has been strongly insisted upon. It has been urged, if they possessed it they might make it an engine to fatigue the legislature into a compliance with their measures. Instances of an abuse of the like power in the crown, under the former government, have been cited.

“It is a sufficient answer to all this to say, that no such power is contended for. I do not assert that their request *obliged* the governor to convene the legislature; I only maintain that their request on an important national subject, was such an occasion as left him at liberty to do it without any colour for imputing to him a breach of the constitution; and that from motives of respect to the union, and to avoid any further degradation of its authority, already at too low an ebb, he ought to have complied.

“Admitting in the fullest extent that it would be dangerous to allow to congress the power of requiring the legislature to be convened at pleasure, yet no injury or inconvenience can result from supposing the call of the United States, on a matter by them deemed of importance, to be an occasion sufficiently extraordinary to *authorize*, not to *oblige* the governor to comply with it.

“I cannot forbear remarking, that it is a common artifice to insinuate a resemblance between the king under the former government and congress; though no two things can be more unlike each other. Nothing can be more dissimilar than a monarch, permanent, hereditary, the source of honour and emolument, and a republican body com-



posed of a number of individuals appointed annually, liable to be recalled within the year, and subject to a continual rotation; which, with few exceptions, is the fountain neither of honour nor emolument. If we will exercise our judgments, we shall readily see no such resemblance exists, and that all inferences deduced from the comparison must be false.

“Upon every occasion, however foreign such observations may be, we hear a loud cry raised about the danger of intrusting power to congress; we are told it is dangerous to trust power any where; that power is *liable* to abuse, with a variety of trite maxims of the same kind. General propositions of this nature are easily framed, the truth of which cannot be denied, but they rarely convey any precise idea. To these we might oppose other propositions equally true, and equally indefinite. It might be said that too little power is as dangerous as too much; that it leads to anarchy, and from anarchy to despotism. But the question still recurs, what is too much or too little? Where is the measure or standard to ascertain the happy mean?

“Powers must be granted, or civil society cannot exist: the possibility of abuse is no argument against the thing, this possibility is incident to every species of power, however placed or modified. The United States, for instance, have the power of war and peace. It cannot be disputed that conjunctures might occur, in which that power might be turned against the rights of the citizens; but where can we better place it—in short, where else can we place it at all?

“In our state constitution we might discover power liable to be abused to very dangerous purposes. I shall instance only the council of appointment. In that council the governor claims and exercises the power of nominating to all offices. This power of nomination, in its operation,

amounts to a power of appointment ; for it can always be so managed as to bring in persons agreeable to him, and exclude all others. Suppose a governor disposed to make this an instrument of personal influence and aggrandizement—suppose him inclined to exclude from office all independent men, and to fill the different departments of the state with persons devoted to himself—what is to hinder him from doing it ? who can say how far the influence arising from such a prerogative might be carried ? Perhaps this power, if closely inspected, is a more proper subject of republican jealousy than any power possessed or asked by congress, fluctuating and variable as that body is.

“But as my intention is not to instil any unnecessary jealousies, I shall prosecute these observations no further. They are only urged to show the imperfections of human institutions, and to confirm the principle, that the possibility of a power being abused, is no argument against its existence.

“Upon the whole, let us venture with caution upon constitutional ground. Let us not court nor invite discussions of this kind. Let us not endeavour still more to weaken and degrade the federal government, by heaping fresh marks of contempt on its authority. Perhaps the time is not far remote, when we may be inclined to disapprove what we now seem eager to commend, and may wish we had cherished the union with as much zeal as we now discover apprehension of its encroachments.

“I hope the house will not agree to the amendment. In saying this, I am influenced by no other motive than a sense of duty. I trust my conduct will be considered in this light. I cannot give my consent to put any thing upon our minutes which, it appears to me, we may one day have occasion to wish obliterated from them.”

The opposition was again called up, and travelled over the same ground ; inveighed against the dangers of an in-

croachment on the rights of the people ; justified fully the conduct of the governor ; declared that the decision of the constitutional question was not necessarily involved, and closed with a strong appeal to popular feeling on the dangers to be apprehended from countenancing such an invasion of the freedom of their deliberations

Hamilton replied ; indicated more clearly the fallacy of the arguments which had been used ; pointed out the true construction of the language of the constitution ; warned the house of the folly and danger of this distrust of the powers of congress, and ridiculed the attempt to draw an analogy between its powers and those of a monarchy. "Are we not," he asked, "to respect federal decisions ? are we on the contrary to take every opportunity of holding up their resolutions and requests in a contemptible and insignificant light, and tell the world their calls, their requests are nothing to us ; that we are bound by none of their measures ? Do not let us add to their embarrassments, for it is but a slender tie that at present holds us. You see, alas ! what contempt we are falling into since the peace ; you see to what our commerce is exposed on every side , you see us the laughing-stock, the sport of foreign nations. And what may this lead to ? I dread, sir, to think. Little will it avail then to say, we could not attend to your wise and earnest requests without inconvenience - little will it avail to say, it would have injured individual interests to have left our farms. These things are trifling when compared to bringing the councils and powers of the union into universal contempt, by saying their call was unimportant, and that it did not come under the indefinite meaning of '*extraordinary*. See, gentlemen, before you may *feel*, what may be your situation hereafter. There is more involved in this measure than presents itself to your view.

"You hear it rung in your ears that, from the resemblance between the king and the congress of these states,

it would be dangerous to come into measures proposed by them, and adopted by every state but this But I say there is no danger ; it is impossible ; the constitution, the confederation, prevents it. Let us hear the reasoning used ;—they have the power of declaring war and peace, and request the power of raising and applying money. This, if in a king, permanent, hereditary, and independent of the people, would be danger ; but in an annual body chosen from ourselves, and liable on every turn of popular breath to be changed, who are checked by twelve other states, who would not stand by and see the ruin of their associates, as it would involve their own,—where can be the danger ? How can a similitude exist between bodies so different—as different as east from west, as north from south ? I regret that these things should be compared, for there is no necessity for sounding this alarm. It is enough the danger of republican governments that their very nature tends to their destruction, because of their liability to change ”

The question was then taken, and such was the force of the governor's party, that the conciliatory substitute was rejected by a vote of thirty-six to nine.

A few days after the address was adopted, this irritating topic being disposed of, the friends of the impost, however inauspicious the prospect, indulged the hope that the exigencies of the country might induce a compliance with a measure which had been at this time sanctioned by all of the other states, and that notwithstanding the views of the opposition, when the final vote was taken, they would shrink from the responsibility of placing the state in an attitude so hostile to the confederation and leading to consequences so portentous.

A motion was made for a reference of this subject to a committee, according to the usual practice of the house, but the speaker having avowed himself a friend of the

measure, and it being apprehended that the report of a committee favourable to the impost might have weight with the house, an attempt was made to defeat this motion and to refer the subject to a committee of the whole house. This design was defeated, and a committee was appointed to investigate the subject. While under its consideration, Hamilton moved a reference of the laws apparently contravening the treaty. one, relative to debts due to persons within the enemy's lines; the other, the much agitated "Trespass act:" taking as the basis of this motion the letter of the secretary of foreign affairs, and the communications of the British government in relation to its violation. Of this committee he was appointed chairman, and he introduced a bill after a speech indicating the importance of this measure to the state, and her obligation to remove all impediments to the foreign negotiations.

The following is a brief outline of his remarks upon this subject. He first expressed great uneasiness that any opposition should be made to this bill, particularly as this state was individually interested therein. He felt greater regret from a conviction in his own mind on this occasion, that the bill should be objected to, as there was not a single law in existence in this state in direct contravention of the treaty of peace. He urged the committee to pass the bill, from the consideration that the state of New-York was the only state to gain any thing by a strict adherence to the treaty.

There was no other state in the union that had so much to expect from it. The restoration of the western posts was an object of more than one hundred thousand pounds per annum. Great Britain held those posts on the plea that the United States had not fulfilled the treaty, and which we have strong assurances she will relinquish on the fulfilment of our engagements with her. But how far Great Britain might be sincere in her declaration was unknown.

Indeed he doubted it himself. But while he doubted the sincerity of Great Britain, he could not but be of opinion that it was the duty of this state to enact a law for the repeal of all laws which may be against the treaty, as by doing away all exceptions she would be reduced to a crisis; she would be obliged to show to the world whether she was in earnest or not, and whether she will sacrifice her honour and reputation to her interest. With respect to the bill, as it was drafted in conformity with the recommendation of congress, he viewed it as a wise and salutary measure; one calculated to meet the approbation of the different states, and most likely to answer the end proposed. Were it possible to examine an intricate maze of laws, and to determine which of them or what parts of those laws were opposed to the treaty, it still might not have the intended effect, as different parties would have the judging of the matter. What one would say was a law not inconsistent with the treaty of peace, another might say was so, and there would be no end, no decision of the business. Even some of the states might view laws in a different manner. The only way to comply with the treaty, was to make a general and unexceptionable repeal. Congress, with an eye to this, had proposed a general law, from which the one before them was a copy. He thought, as it was obvious to every member of the committee, that as there was no law in direct opposition to the treaty, no difficulty could arise from passing the bill.

Some gentlemen, he observed, were apprehensive that the bill would restore confiscated estates. This he did not admit. However, if they were so disposed, they might add a proviso to prevent it. He had written one, which any of the gentlemen might move, if they thought necessary. In his opinion it was not necessary. The bill only provided that no future confiscations should take place, and that congress should *earnestly recommend a*

restoration of property. But there was nothing obligatory in this.

If this state should not come into the measure, would it not be a very good plea for the other states to favour their own citizens, and say, why should we do thus, when New-York, the most interested of any of the states, refuses to adopt it? And shall we suffer this imputation, when we have in fact no laws that militate against the treaty?

He stated the great disadvantages that our merchants experienced from the western posts being in the hands of the British, and asked if it was good policy to let them remain so.

It had been said that the judges would have too much power. That was a misapprehension. He stated the powers of the judges with great clearness and precision. He insisted that their powers would be the same whether these laws passed or not; for as all treaties were known by the constitution as the laws of the land, so must the judges act on them, any law to the contrary notwithstanding.

Cicero, the great Roman orator and lawyer, lays it down as a rule, that when two laws clash, that which relates to the most important matters ought to be preferred. If this rule prevail, who can doubt what would be the conduct of the judges, should any laws exist inconsistent with the treaty of peace? But it would be impolitic to leave them to the dilemma either of infringing the treaty to enforce the particular laws of the state, or to explain away the laws of the state to give effect to the treaty.

He declared that the full operation of the bill would be no more than merely to declare the treaty the law of the land, and that the judges viewing it as such, shall do away all laws that may appear in direct contravention of it. Treaties were known constitutionally to be the law of the land, and why be afraid to leave the interpretation of those

laws to the judges The constitution knows them as the interpreters of the law He asked if there was any member of the committee who would be willing to see the first treaty of peace ever made by this country violated? This he did not believe. He could not think that any member on that floor harboured such sentiments. He was in hopes that the committee would agree with him in opinion, and give a proof of their attachment to our national engagements by passing the bill, which would do away every exception of the British court." This exposition overcame every objection, and this important act passed the house, but fell in the senate.

At the commencement of the session he was appointed chairman of the committee on expiring laws, to report which should be continued, and also such new laws as they should conceive would be beneficial to the state. In the performance of this duty his mind was directed to a great variety of topics The first matter of local interest which called forth his exertions, was an "act to regulate the elections" of the state. This act not only involved several important principles, but had a special bearing on its political character Its details have not enough of general interest to warrant their introduction in this place. It is sufficient to remark the singular inconsistency evinced on this occasion in the conduct of the opponents to the power of the general government, who claimed the exclusive merit of protecting the liberties of the state.

On questions which arose involving the highest constitutional principles, while Hamilton and his friends were foremost in resisting all attempts to explain away the state constitution, and to abridge the freedom of elections, and were endeavouring to maintain a complete and full toleration of religious opinions, the state party was found advocating measures tending to the most dangerous consequences. They opposed a mere request of congress for conve-



ning the legislature of the state, as threatening danger to the freedom of deliberation, and they proposed a test not sanctioned by its constitution. They refused a grant of power necessary to the existence of the union, as dangerous to the liberties of the people; and they sought to violate the constitution of their state, by restraining the free exercise of the right of suffrage—the first principle of all free institutions—the sovereignty of the people

One proposition was to enable the inspectors of the elections to take aside every illiterate person, and examine him privately, respecting his ballot. Against this, Hamilton took a decided stand, showing the danger of an improper influence being exercised, and the probability that the leaning of the inspectors would produce an improper bias; contending that “it was better that the illiterate should take the chance of imposition from parties equally active, than to leave them subject to party views, concentrated in inspectors, upon whom the fate of the election depended. That it was wholly contrary to the very genius and intention of balloting, which means, that a man’s vote should be secret, and known only to himself; but by this proviso he was not merely permitted, he was obliged to discover his vote, thus depriving the unlettered person of that liberty which his more instructed fellow-citizen had secured to him. These reasons, he hoped, would be deemed sufficient to induce the house to reject the clause, as repugnant to the genius and liberty of our republic.” He prevailed.

Another clause authorized the inspectors to impose an oath of abjuration of ecclesiastical as well as civil obedience, which was defended by the leader of the democratic party, on the ground that this distinction was warranted by the constitution. Hamilton declared “that the constitution was their creed and standard, and ought never to be departed from, but that its provisions had not been correctly understood; that there were two different bodies

in the state to which the proposition had reference These were the Roman Catholics who were already citizens, who were born among us, and those coming from abroad. That from foreigners wishing to be naturalized, the abjuration of their former sovereign might be required for reasons which do not exist on the part of the person born and educated here, unencumbered with that dangerous fanaticism which terrified the world some centuries back, but which is now dissipated by the light of philosophy. These acts are therefore no longer necessary, for the dangers are now only imaginary, and are void of existence, at least with respect to us, the object being to exclude Roman Catholics from their right of representation

He animadverted on the little influence possessed by the pope in Europe—spoke of the reformation going forward in the German empire, and of the total independence of the French church, and compared the requiring of oaths of this nature, to the vigilance of those who would bring engines to extinguish fires which had long subsided. He observed, also, that the Roman Catholics were not the only society affected—that some of the Dutch Reformed churches held a species of ecclesiastical foreign jurisdiction; he alluded to the classes of Amsterdam. “But,” he asked, “is the natural subject, the man born among us, educated with us, possessing our habits, possessing our manners, with an equal ardent love of his native country, to be required to take the same oath of abjuration? What has he to abjure? He owes no fealty to any other power upon earth. There is no probability that his mind will be led astray by bigotry or foreign influence. Then why give him cause of dissatisfaction, by bringing forward a *test* which will not add to his fidelity?”

He stated that the clause in the constitution confined the test to foreigners, and that it was adopted after much debate, and by a small majority, and that even as to them, he

questioned whether the test ought to be proposed. That he was decidedly against going so far as to extend it to ecclesiastical matters. "Why should we wound the tender conscience of any man? and why present oaths to those who are known to be good citizens? why alarm them? why set them upon inquiry that is useless and unnecessary? You give them reason to suppose that you request too much of them, and they cannot but refuse compliance.

"The constitution does not require such a criterion to try the fidelity of any citizen. It is solely intended for aliens and foreigners, coming from abroad with manners and habits different from our own, and whose intentions are concealed. The oath should be confined to civil matters. It is all that we ought or can require. A man will not then be alarmed in his interpretation. It will not set his mind to inquire if his religious tenets are affected, and much inconvenience would be avoided. We should be cautious how we carry the principle of requiring and multiplying tests upon our fellow-citizens, so far as to practise it to the exclusion or disfranchisement of any." The clause was, nevertheless, in part retained.

A further provision was proposed, excluding pensioners and officers holding under congress, from seats in the senate and assembly. This clause gave rise to the discussion of a most important question, whether the legislature possessed the power of abridging the constitutional rights of the people.

By the state party it was contended, that while the constitution protected the rights of the electors, it was silent as to the *elected*, and that therefore the legislature had the right to annex qualifications to the elected.

Colonel Hamilton observed, "that they were going on dangerous ground; that the best rule to follow was the rule of the constitution, which it would be safest to adhere to without alteration or addition. If we once depart from

this rule, it is impossible to see where we would end. To-day, a majority of the persons sitting here, from a particular mode of thinking, disqualify one description of men ; a future legislature, from a particular mode of thinking on another point, disqualify another set of men. One precedent is the pretext of another, till we narrow the ground of qualifications to a degree subversive of the constitution. It is impossible to suppose that the convention who framed the constitution were inattentive to this point. It is a matter of too much importance not to have been well considered.

“ They have fixed the qualification of electors with precision. They have defined those of senator and governor, but they have been silent as to the qualifications of members of assembly. It may be said that, being silent, they have left the matter to the discretion of the legislature. But is not the language of the framers of the constitution rather this—We will fix the qualifications of electors ; we will take care that persons absolutely indigent shall be excluded ; we will provide that the right of voting shall be on a broad and secure basis, and we will trust to the discretion of the electors themselves the choice of those who are to represent them in assembly ?

“ Every qualification implies a disqualification. The persons who do not possess the qualification required, become ineligible. Is not this to restrain the freedom of choice allowed by the constitution to the body of electors ? An improper exercise of this liberty cannot constitutionally be presumed. Why, therefore, should we circumscribe it within limits unknown to the constitution ? Why should we abridge the rights of any citizens in so important an article ? By the constitution, every citizen is eligible to a seat in the assembly. If we say certain descriptions of persons shall not be so eligible, what is this but to deprive all those who fall within that description, of an essential right allowed them by the constitution ?

“If we once break the ground of departing from the simple plan of the constitution, it may lead us much farther than we intend.

“From the prevalency of a certain system, it is now proposed to exclude all persons from seats who hold offices under congress; the pretence is, to guard against an improper influence. I may think another species of influence more dangerous. To preserve consistency, we should declare that no member of congress should hold a seat. For, surely, if it be dangerous that the servants of congress should have a seat in this house, it is more dangerous that the members themselves should be allowed this privilege.\*

“There are officers who have been wounded in the service, and who now have pensions under the United States as the price of their blood; would it be just, would it not be cruel on this account to exclude men from a share in the administration of that government which they have at every hazard contributed to establish? From the silence of the constitution, it is inferred that it was intended to leave this point to the discretion of the legislature. I rather infer that the intention of the constitution was to leave the qualifications of their representatives wholly to the electors themselves. The language of the constitution seems to be this: Let us take care that the persons to elect are properly qualified, that they are in such a situation in point of property as not to be absolutely indigent and dependent, and let us trust to them the care of choosing proper persons to represent them.

“I hold it to be a maxim which ought to be sacred in our form of government, that no man ought to be deprived of any right or privilege which he enjoys under the consti-

\* John Lansing and John Haring were recently appointed by the legislature in which they had seats delegates to congress

tution, but for some offence proved in due course of law. To declare qualifications or disqualifications by general descriptions in legislative acts, would be to invade this important principle. It would be to deprive, in the gross, all those who had not the requisite qualifications, or who were objects of those disqualifications, of that right to a share in the administration of the republic which the constitution gives them ; and thus, without any offence, to incur a forfeiture. As to the objection that the electors might even choose a foreigner to represent them within the latitude of the constitution, the answer is, that common sense would not tolerate such a construction. The constitution, from the fundamental policy of a republican government, must be understood to intend *citizens*.

“ Let us pursue the subject a little further. Commerce, it will be admitted, leads to an increase of individual property. Property begets influence. Though a legislature, composed as we are, will always take care of the rights of the middling and lower classes, suppose the majority of the legislature at a future day to consist of wealthy men, what could hinder them, if the right of innovating on the constitution be admitted, from declaring that no man not worth ten thousand pounds should be eligible to a seat in either house ? Would not this introduce a principle of aristocracy fatal to the genius of our present constitution ?

“ In making this observation, I cannot be suspected of wishing to increase the jealousy already sufficiently high of men of property. My situation, prospects, and connections, forbid the supposition ; but I mean honestly to lay before you the dangers to which we expose ourselves, by letting in the principle which the clause under consideration rests upon. I give no opinion on the expediency of the exclusion proposed. I only say, in my opinion, the constitution does not permit it ; and I shall be against any

qualification or disqualification, either of electors or elected, not prescribed by the constitution

“The qualifications both of the electors and the elected ought to be fundamental in a republican form of government, not liable to be varied or added to by the legislature, and they should for ever remain where the constitution left them. It is to be lamented that men, to carry some favourite point in which their party or their prejudices are interested, will inconsiderately introduce principles and precedents which lead to successive innovations destructive of the liberty of the subject and the safety of the government.” The clause was *stricken out*.

The candour, the simplicity of his truth, and the strict regard to the liberties of the citizen displayed on these occasions, entered deeply into the mind of the house, and every question where state pride was not concerned, or official influence not exerted, he carried by a large majority.

He opposed with great force an amendment of the senate, making a hostile discrimination as to persons who had been engaged in privateering during the war, on the ground that all legislative disfranchisements were unconstitutional. “In one article of the constitution it is said—No man shall be disfranchised or deprived of any right he enjoys under the constitution, but by the law of the land or the judgment of his peers. Some gentlemen hold that ‘the law of the land’ will include an act of the legislature; but Lord Coke, that great luminary of the law, in his comment on a similar clause in Magna Charta, interprets the law of the land to mean presentment, and indictment, and process of outlawry, as contradistinguished from trial by jury.

“But if there were any doubt upon the constitution, the bill of rights enacted in this very session removes it. It is there declared that no man shall be disfranchised or deprived of any right but by due process of law or the judgment of his peers. The words ‘due process,’ have a pre-

cise technical import, and are only applicable to the process and proceedings of the courts of justice. They can never be referred to an act of the legislature.

“Are we willing then to endure the inconsistency of passing a bill of rights, and committing a direct violation of it in the same session? In short, are we ready to destroy its foundations at the moment they are laid?”

“When the discriminating clauses admitted into the bill by this house were introduced, he was restrained by motives of respect for the sense of a respectable part of the house, from giving it any other opposition than a simple vote. The limited operation they would have, made him less anxious about their adoption, but he could not reconcile it to his judgment or feelings to observe a like silence on the amendment proposed by the senate. Its operation would be very extensive, it would include almost every man in the city concerned in navigation during the war.

“Let us, then, distinct from constitutional considerations, consider the expediency and justice of the clause. The word privateer is indefinite, and may include letters of marque. The merchants of this city during the war, generally speaking, must abandon their means of livelihood or be concerned in navigation. If concerned in navigation, they must of necessity have their vessels armed for defence. They would naturally take out letters of marque. If every owner of a letter of marque is disfranchised, the body of your merchants will probably be in this situation. Is it politic or wise to place them in it? Is it expedient to force by exclusions and discriminations a numerous and powerful class of citizens to be unfriendly to the government?”

“He knew many individuals who would be comprehended, who are well affected to the prosperity of the country, who are disposed to give every support to the government, and who, some of them at least, even during the war, had manifested an attachment to the American cause.



But there is one view in which the subject merits consideration, that must lay hold on all our feelings of justice. By the maritime law, a majority of the owners have a right to dispose of the destination of the vessel. The dissent of the minority is of no avail. It may have happened, and probably has happened in many instances, that vessels have been employed as privateers, or letters of marque, by a majority of the owners contrary to the sense of the minority.

“Would it be just to punish the innocent with the guilty, —to take away the rights of the minority, for an offence committed by the majority without their participation, perhaps contrary to their inclinations? He would mention a further case, not equally strong, but of considerable force, to incline the house against the amendment. He had been informed that in one or more instances during the war, some zealous people had set on foot subscriptions for fitting out privateers, perhaps at the instigation of the British government, and had applied to persons suspected of an attachment to us to subscribe, making their compliance a test of their loyalty. Several individuals well disposed to our cause, to avoid becoming the objects of persecution, had complied, would it not be too rigorous to include them in so heavy a penalty?

“It may be said they were guilty of a culpable want of firmness. But if there are any of us who are conscious of greater fortitude, such persons should not on that account be too severe on the weaknesses of others. They should thank nature for its bounty to them, and should be indulgent to human frailty. How few are there who would have had strength of mind enough in such circumstances to hazard, by a refusal, being marked out as the objects of military resentment!

“I hope, as well from motives of justice as a regard to the constitution, we shall stop where we are, and not go

any farther into the dangerous practice of disqualifying citizens by general descriptions."

"Though," a member replied, "he held Colonel Hamilton in high estimation, and had a very great respect for his candour, abilities, and knowledge of mankind, yet he believed him much mistaken. He laid it down as a maxim, that the man who was once an enemy will always remain so. It was prudent to guard against admitting these people to a participation of the rights of citizens. He would not operate on those who had taken up arms unwillingly. The exclusion was constitutional, because the constitution must warrant every thing necessary for its own support." He appealed to that section of it which prohibited attainders, except for crimes committed during the war.

Hamilton denied the distinction, and explained the intention and meaning of this clause of the constitution. He defined acts of attainder, "as laws confiscating for treason and misprision of treason all the property and estate of the attainted traitor, and forfeiting his life unless he appeared to take his trial." This was the construction of it by the country from which we derive our knowledge of jurisprudence, and he believed no example could be adduced, wherein it had been extended or applied in any other manner. He was positive it could not be exercised to disfranchise a whole party, for this obvious reason, that it would involve the innocent with the guilty. This clause in the constitution was only intended to apply in particular cases, where an exception to the established mode of common law became necessary by the persons absenting themselves, and did not apply to the subject before the house. Precedents of this kind laid the foundation for the subversion of the liberties of the people. He hoped they would not be established." He again prevailed.\*

It has been stated that in the year seventeen hundred and eighty-two, while Hamilton was continental receiver, he had digested a system of taxation, the great object of which was to exclude arbitrary valuations; that he also had sought to engraft the same principle in the continental revenue system, framed in the following year.

Having been placed on the committee of ways and means, he now brought forward and enforced at much length similar views. His great objects were to substitute a mode by which every individual could himself estimate what he had to pay, without being dependent on the caprices, the affections, or the enmities of another; and to approximate as near as possible to certainty and equality, the two great objects to be aimed at in every system of taxation.

One of the clauses of the bill raising taxes deviated from a general and safe principle. It proposed a tax on certain legal instruments, and was objected to because it was partial in its operation affecting the members of the law. Hamilton declared his opinion, "that it was not proper to tax any particular class of men for the benefit of the state at large, but in the present instance it was to answer a very important purpose. It was putting in force that most excellent part of the constitution, which declares that the judges should be independent of the legislature. This, at present, was not the case. He therefore supported the paragraph, observing that the salaries of the judges should be permanent; that they should neither fear the powers nor court the favour of the legislature. He believed it was right that this independence should arise from the tax proposed." He succeeded in sustaining this provision, but the plan, after a very full consideration, was defeated by a small majority.

A discussion arose upon the objections of the council of revision to a bill for settling intestate estates, proving wills,

and granting letters of administration. Jones advocated the enactment of the law. Hamilton, after stating that he should probably vote with him, remarked, "that he did not view the matter in quite so clear a light as that gentleman appeared to do. There appeared to him to be difficulties in the case, which he would candidly lay before the house to assist its judgment.

"The objection is, that a new court is erected, or an old one invested with a new jurisdiction, in which it is not bound to proceed according to the course of the common law. The question is, what is meant in the constitution by this phrase, 'the common law?' These words have, in a legal view, two significations—one more *extensive*, the other more *strict*. In their most extensive sense, they comprehend the constitution of all those courts which were established by immemorial custom; such as the court of chancery, the ecclesiastical court, &c ; though these courts proceed according to a peculiar law.

"In their more strict sense, they are confined to the course of proceedings in the courts of Westminster, in England, or in the supreme court in this state. If the words are understood in the first sense, the bill under consideration is not unconstitutional. In the last it is unconstitutional, for it gives to an old court a new jurisdiction, in which it is to proceed according to the course of the common law in this last sense. And to give new jurisdiction to old courts, not according to the course of the common law, is, in my opinion, as much of an infringement, in substance, of this part of the constitution, as to erect new courts with such jurisdiction. To say the reverse, would be to evade the constitution.

"But, though I view it as a delicate and difficult question, yet I am inclined to think that the more *extensive* sense may be fully adopted, with this limitation—that such new jurisdictions must proceed according to the course of those

courts, having, by the common law, cognizance of the *subject matter*. They ought, however, never to be extended to *objects* which, at common law, belonged to the jurisdiction of the courts at Westminster, and which in this state are of the peculiar cognizance of the supreme court. At common law, the ecclesiastical courts, not the courts of Westminster, had cognizance of intestacies and testamentary cases. The bill proposes that the court of probates shall have cognizance of the same causes and proceed in the same manner as the ecclesiastical courts, except as to inflicting ecclesiastical penalties. The distinction I have taken will, I am inclined to think, bear us out in passing the bill under consideration. But it is certainly a point not without considerable difficulty." The bill was passed.

If the precise and profound knowledge of the great principles of jurisprudence here evinced, commands the respect of that important class of men whose profession educates and constitutes them the guardians of human rights, his tolerant spirit more attracts the commendation of all those who justly value freedom of conscience, without which the law is chiefly known by her fetters and her scourge.

In the question, the solemn question, "Why should we wound the tender conscience of any man?" the sternest rebuke is given to him who would control religious opinion by the secular arm, as if man had any power over the soul of man. Nor is it less pleasing to remark the caution and the heart with which he watched over the rights of the numerous and less favoured body of men. In the statute regulating elections, it is the poor and "the illiterate" elector who is to be protected, as well as "his more instructed fellow-citizen," in the right of suffrage, and in the right of choosing as his representative whom he pleased, that right to be enjoyed as the constitution gave it, not to be infringed by any legislative act, but to be judged by the law of the land "in its due process."

As a matter affecting the poor, he prepared a bill to regulate the circulation of copper coin, founded on a report which showed a depreciated copper currency, and framed a resolution directing the delegates in congress to move for an alteration in the ordinance as to the mint, so that the copper coin should not pass for more than the actual value of the copper and the expense of coinage.

While discussing an act to exempt from imprisonment the smaller classes of debtors, his only apprehension was, that this exemption would prevent the poor from obtaining assistance from the rich. "He would wish," he said, "that every man in distress would meet relief—he would enter into any measure that would effect this purpose. But the clause as it stood, was not proper; it might be right to say what shall be done in respect to future contracts, but it would be wrong to meddle with the past."

The law to diminish the expense of the collection of small debts, and those in relation to the descent and distribution of property, are all in a similar equal spirit.

At the previous session, an act had been passed abolishing entails, and dividing the inheritance in equal parts among the lawful issue of the intestate. This principle was now extended to personal property, with an equitable reference to previous settlements or advances. Freeholders were, by another act, empowered to alien at their pleasure, and the feudal badges abolished, all charges incident to wardships, liveries, values, and forfeitures of marriages being taken away, and the tenures so held, turned into free and common socage. Lands exempt in other states were here made liable to be sold by executions for debt, and the process in personal actions was simplified.

Having thus given the law a free course, he drafted an act of bankruptcy.

Criminal jurisprudence was also an object of his attention. While he sought to secure the rights of society, a

spirit of lenity marked his course. He introduced an act for the speedy trial of small offenders, and while condemning the severity of some of the penal laws of England, he sustained those which had in view the protection of the subject from arbitrary power. The law of treason was defined, by declaring it to consist only in levying war against the people of the state, or in adhering to their enemies, giving them aid and comfort. It must be established "by good proof of open deed," and no person could be indicted for or convicted of it except on the oaths of "two lawful witnesses," or upon confession "without violence, in open court."

The various other crimes in their successive gradations were also defined, and their punishment prescribed. Amid the disorders following a revolution, frequent violations of personal liberty would take place. To remedy this great evil, a bill was passed to prevent delays in obtaining the evasion of the writ of habeas corpus, entitled "An act for the better securing the liberty of the citizens of the state."

Litigation had become rife, and there was a violent clamour against the members of the bar, by the many against whom the aim of justice was raised. A bill was brought forward to reduce their compensation: with the respect due to the profession of which he was a member, and with a discriminating regard to the true interests of the public, he resisted it as a mere lure for popularity, and demonstrated the folly of reducing their compensation below a reasonable standard. With the same regard to justice, he earnestly opposed a proposition which had been made in a former legislature, and was now renewed, for a discrimination between the different classes of the public creditors, and urged a general and equal provision for them all. "The state," he declared, "ought to give all the relief possible to every class of public claimants. There should be no discrimination with respect to possessors of certificates.

There was no propriety in a partial relief; justice should alike be administered to all." Thus, in a session of the legislature the most distinguished in the annals of this state, he is seen usefully employed in guarding against excess of every kind, and in a revision and cautious modification of most of the great statutes fundamental to its polity.

Had a desire for personal distinction influenced him, instead of this careful observance of ancient landmarks and established precedents, the social system might have been disturbed to gratify the ambition of being the author of a code; but his was of another kind.\*

At this time was also passed an act for the encouragement of navigation by steam, and thus an incitement was given to discoveries which form an era in the annals of this country. This was also an epoch in another branch of legislation, which must largely and happily control its future destinies.

The proposed provisions in the law governing elections for the protection of the rights of illiterate persons, show the want of education at this time. The evil was one of an extent and magnitude worthy the cares of a statesman employed in laying the foundations of an empire.

When studying closely, as Hamilton had done, the intellect of the ancient world, while the wonderful advances it had made with its feeble aids attracted his admiration, the pervading defect of its polity could not have escaped his observation. Its institutions were for the few; the progressive nature of society was overlooked, and hence their frequent and sudden, violent and total subversion. A system of general education was unknown, and consequently when the civilized world was overrun, forming no part

\* It would be a great injustice to omit the name of Samuel Jones as a chief coadjutor in this important duty. To his profound learning, this state is much indebted as a *reviser* of its laws.



of the state, learning was buried amid the ruins of empires, or was compelled to take refuge in the cloister. Emerging from this asylum by slow degrees, it came into a rude world, obscured by the dogmas of the contending sects, which, admitting the theory, refused the right of free inquiry, and at the same time assumed the high office of teaching nations.

The United States being settled at this time, felt these influences, and the early colonies, in their religious prejudices and political speculations, exhibit conspicuously the coexistence of the most adverse principles; in questions of faith, a narrow tyranny; in questions of government, the largest liberty. With the distinguished exception of parts of New-England, the only education proceeded from religious endowments; a happy provision for a people too poor and sparse to educate themselves. But these endowments were inadequate to the purpose.

Hamilton resolved to supply this deficiency; guarding against sectarian or other influences foreign to it, he determined to build up a great system of public instruction upon comprehensive principles; to make it so essential a part of the public policy, that it would endure through every change of government; to render it by habit a want of society, a necessary part of its aliment that must and will be satisfied.

His first great object was to place a book in the hand of every American child. As, in his enlarged views, each branch of knowledge had its place and value in reference to the various natural indications of the mind, the next was to provide for each individual, and each degree and variety of talent, a progressive culture. Thus, from the broad basis of common education was to rise in due gradation a system of order and of beauty, to be cemented with, to pervade, to sustain, to overarch, and to embellish the whole moral and political frame of society.

Only one literary foundation of magnitude existed in the colony of New-York, known as King's College; an endowment by the church of England in the year seventeen hundred and fifty-four, on condition of conformity with its tenets. This college was dispersed at the beginning of the revolution. Its professors fled, its library was plundered, and the edifice, which had been occupied by the British soldiery, alone remained. In the interior of the state the few schools which had been sustained by private resources were abandoned; a fact of moment to show the character of the generation which grew up during this civil war. Soon after the peace, the attention of the legislature was directed to this subject, and in May, seventeen hundred and eighty-four, an act was passed to create a university, of which the great officers of the state, with twenty-four others to be appointed by the governor and council of appointment, and one to represent the clergy, were constituted the regents, upon whom was conferred the government and visitation of the colleges and schools that should be established. This act also provided, in addition to the regents appointed by the state, that every religious society might institute a professorship, and that every founder of a college or school might elect a representative, who, with the president of each institution, was to be a member of the board of regents, of which all professors, tutors, and fellows, were also to be members in virtue of their offices.

Thus, the control of education would soon have been wrested from the state, and would have passed into the hands of those either least apt to detect, or most interested in concealing abuses, and who would not have kept pace with the advances of society. This act also violated a great principle of justice, despoiling King's College of its property and vesting it in the university. At the next meeting of the legislature an amendatory act was passed,

which extended the error of the original law by giving to the clergy of each denomination the right of representation in the regency. It also constituted a new board of regents, of which Hamilton was appointed a member. No beneficial results were attained by this legislation; the college languished, and the severe blow which it had received by the violation of its charter left little prospect of its renovation, while the precedent would deter other similar efforts of munificence. It also essentially deviated from Hamilton's views, which contemplated a state establishment for public instruction, excluding all clerical and individual influence.

Soon after the excitement which had arisen at the opening of the session was quieted, he introduced "an act to institute a university, and for other purposes." This act repealed the previous laws, and established a university by the style of the "Regents of the University of the State of New-York;" who were incorporated with perpetual succession, with power to hold property yielding a limited income. It provided, that there should be always twenty-one regents, "of which the governor and lieutenant-governor of the state, for the time being, were always, in virtue of their offices, to be two;" and it appointed the other regents by name, who, with all future regents, were to continue in place during the pleasure of the legislature, which was to supply vacancies. Thus, it was hoped that the supervision of education would not be perverted to party purposes.

The regents were to be convened by the governor, in the first instance, and were to elect a chancellor and vice-chancellor, to hold their offices during their pleasure.

The regents were constituted the visitors of all the colleges and academies of the state, with the duty of visiting every college once in each year. They were enjoined to meet annually at the seat of government, to report the state

of education and discipline to the legislature, with power to supply vacancies occurring in the offices of presidents of the colleges, or of the principals of the academies, through the neglect of their trustees. They were also to confer degrees, to apply their funds at their discretion, "in a manner most conducive to the promotion of useful knowledge within the state," and to authorize the founding of colleges and academies by individuals, the trustees of which, whose number was defined, after a declaration under the common seal of the regents to that effect, became incorporated with perpetual succession, but always subject to their visitation.

The annual revenue of the academies was also limited. The scholars educated in those, whose plan of education should be approved by the regents, were entitled, upon examination, to be admitted into either college.

Provisions were made for the government of these academies by their trustees, and for their elevation to the rank of a college when deemed expedient by the regents. No president or professor was to be ineligible by reason of his religious tenets—all test-oaths were prohibited. No professor or tutor could be a trustee of any of these establishments, nor could any presiding officer have a vote as to his salary, nor were any of the officers or founders of these institutions eligible as regents of the university. These were the general provisions of this important act. It also repaired the wrong to King's College, ratifying its charter under the previously selected name of Columbia College, expressly abrogating all provisions in it requiring test-oaths or declarations of religious conformity, limiting the number of the trustees, when reduced by death or resignation, to twenty-four persons, who were vested with the original property of the college. By this system, all the seminaries of instruction became a part of the university, and were subject to its visitation. Every institution

had a government of its own, and a strong inducement to improvement was held out to each academy, by the promise of advancement to the rank of a college.

The privilege to the scholars of academies of admission into the colleges, would secure a uniformity of discipline and of education, and, that which Hamilton deemed of the greatest importance under a popular government, every foundation of learning was secured from legislative interference by a perpetual charter.

Justly as New-York may boast her provision for the education of her citizens, yet from a want of perseverance and comprehensive energy in its administration, this important act has not yet produced all the beneficial results anticipated by its author.

It is only by a comparison of his system with those of the autocratic monarchies of Europe, and of their success in extending and raising the popular intelligence, that a just estimate can be formed of its merits.

Thus viewed, it will be deemed not a little remarkable that Hamilton should have anticipated, by a bold effort of his genius, a plan of public instruction that will bear comparison with those which in Europe have been the results of long usage, and of successive acts of legislation, at last moulded into a form that would seem not to be susceptible of improvement.\*

While his mind had been in part occupied with these various subjects of interest, his thoughts were chiefly directed to the great object which had induced him to accept a seat in the assembly. Would New-York still obstinately withhold from congress the power of raising a national revenue, was the question he resolved to determine.

\* It is stated that the imperial decree of March, 1808, must, from its analogy with this law, have been "seen and copied" by the statesmen of France —Am Qr Rev v. 6, p 145

Every effort having been made to impress on the members of the legislature the necessity of granting the impost upon terms which would be accepted by the other states, a final action on this measure took place on the fifteenth of February.

After adverting to the discrepancy of the votes which had been given on the different clauses of this bill, Hamilton observed :—

“It is a common practice upon the discussion of an important subject, to endeavour to conciliate the good-will of the audience to the speaker, by professions of disinterestedness and zeal for the public good. The example, however frequent, I shall no farther imitate than by making one or two general observations. If, in the public stations I have filled, I have acquitted myself with zeal, fidelity, and disinterestedness; if, in the private walks of life, my conduct has been unstained by any dishonourable act; if it has been uniformly consistent with the rules of integrity, I have a right to the confidence of those to whom I address myself. They cannot refuse it to me without injustice—I am persuaded they will not refuse it to me.

“If, on the other hand, my public conduct has been in any instance marked with perfidy, duplicity, or with sinister views of any kind; if any imputations founded in fact can be adduced to the prejudice of my private character, I have no claim to the confidence of the community, nor should I expect it.

“Even these observations I should have spared myself, did I not know that, in the rage of party, gross calumnies have been propagated. Some I have traced and detected; there may still be others in secret circulation, with which I am unacquainted. Against the influence of such arts I can have no other shield than the general tenor of my past conduct. If that will protect me, I may safely confide in the candour of the committee. To that standard I cheer-

fully submit. But, indeed, of what importance is it who is the speaker? His reasons only concern the committee. If these are good, they owe it to themselves and to their constituents to allow them their full weight."

He then proceeded to examine the objections which had been raised to the delegation of legislative power to congress. This examination led to a close and cogent argument, embracing a consideration of the relations of the states to the confederacy; showing that the idea of a union of the colonies had pervaded all the public acts of the country; that it was continued and confirmed in the declaration of independence; and that the confederation, by the express terms of the compact, preserved and continued the power of perpetuating that union. In the course of these remarks, the powers of the confederation were briefly analyzed, and its supremacy asserted; and it was shown that the objections to the proposed grant of the impost would, if sustained, have proved that the powers already vested in it were illegal and unconstitutional; would render a confederation of the states in any form impracticable, and would defeat all the provisions of the constitution of the state which related to the United States. "If," he observed, "the arguments I have used under this head are not well founded, let gentlemen come forward and show their fallacy. Let the subject have a fair and full explanation, and let truth, on whatever side it may be, prevail."

He in the next place answered the objection, that this grant of the impost to congress would endanger their liberties; and, in order to overcome prejudice, he gave a narrative of the origin and progress of the measure. "Whence," he asked at its close, "can this danger to liberty arise? The members of congress are annually chosen by the several legislatures; they are removable at any moment at the pleasure of those legislatures. They come together with different habits, prejudices, and interests. They are, in fact,

continually changing. How is it possible for a body so composed to be formidable to the liberties of the states, several of which are large empires in themselves?

“The subversion of the liberty of these states could not be the business of a day. It would at least require time, premeditation, and concert. Can it be supposed that the members of a body so constituted, would be unanimous in a scheme of usurpation? If they were not, would it not be discovered and disclosed? If we even could suppose this unanimity among one set of men, can we believe that all the new members, who are yearly sent from one state or another, would instantly enter into the same views? Would there not be found one honest man, to warn his country of the danger?

“Suppose the worst: suppose the combination entered into and continued,—the execution would at least announce the design, and the means of defence would be easy. Consider the separate power of several of these states, and the situation of them all! Consider the extent, populousness, and resources of Massachusetts, Virginia, Pennsylvania, I might add, of New-York, Connecticut, and other states! Where could congress find means sufficient to subvert the government and liberties of either of these states? Or rather, where find means sufficient to effect the conquest of all? If an attempt was made upon one, the others, from a sense of common danger, would make common cause, and they could immediately unite and provide for their joint defence.

“There is one consideration of immense force in this question, not sufficiently attended to. It is this—that each state possesses in itself the full power of government, and can at once, in a regular and constitutional way, take measures for the preservation of its rights. In a single kingdom or state, if the rulers attempt to establish a tyranny, the people can only defend themselves by a tumultuary insurrection. They must run to arms without concert



or plan, while the usurpers, clothed with the forms of legal authority, can employ the force of the state to suppress them in embryo, and before they can have time or opportunity to give system to their opposition. With us the case is widely different. Each state has a government completely organized in itself, and can at once enter into a regular plan of defence, with the force of the community at its command. It can immediately form connections with its neighbours, or even with foreign powers, if necessary.

“In a contest of this kind, the body of the people will always be on the side of the state governments. This will not only result from their love of liberty and regard to their own safety, but from other strong principles of human nature.” Among these were mentioned the operation of the state governments upon the immediate personal concerns to which the sensibility of individuals is awake—the distribution of private justice, and the weight of official influence. ‘The causes,’ he said, ‘which secure the attachment of the people to their local governments present us with another important truth—the natural imbecility of federal governments, and the danger that they will never be able to exercise power enough to manage the federal affairs of the union. Though the states will have a common interest, yet they will also have a particular interest; for example, as a part of the union, it will be the interest of every state that the general government should be supplied with the revenues necessary for the national purposes; but it will be the particular interest of each state to pay as little itself, and to let its neighbours pay as much as possible. Particular interests have always more influence upon men, than general. The several states, therefore, consulting their immediate advantage, may be considered as so many eccentric powers tending in a contrary direction to the government of the union, and as

they will generally carry the people along with them, our confederacy will be in continual danger of dissolution.

“ This is the real rock upon which the happiness of this country is likely to split. This is the point to which our fears and cares should be directed. To guard against this, and not to terrify ourselves with imaginary dangers from the spectre of power in congress, will be our true wisdom ”

He then proceeded to examine and to vindicate the provisions of the bill making the proposed grant—pointed out the habitual delinquencies to the repeated requisitions—the small amount of the general revenue collected—the hostility of the adjacent states—the increased burden imposed on New-York by the inequality of the existing system—the beneficial consequences of a national revenue—the necessity of it for the payment of the foreign debt. Having dwelt upon these topics, which compelled a large survey of the state of the country, he closed with the following remarks: “ Can our national character be preserved without paying our debts? Can the union subsist without revenue? Have you realized the consequences which would attend its dissolution? If these states are not united under a federal government, they will infallibly have wars with each other, and their divisions will subject them to all the mischiefs of foreign influence and intrigue. The human passions will never want objects of hostility. The western territory is an obvious and fruitful source of contest. Let us also cast our eye upon the map of this state, intersected from one extremity to the other by a large navigable river. In the event of a rupture with them, what is to hinder our metropolis from becoming a prey to our neighbours? Is it even supposable that they would suffer it to remain the nursery of wealth to a distinct community? These subjects are delicate, but it is necessary to contemplate them, to teach us to form a true estimate of our situation. Wars with each other beget standing

armies—a source of more real danger to our liberties than all the power that could be conferred upon the representatives of the union ; and wars with each other would lead to opposite alliances with foreign powers, and plunge us into all the labyrinths of European politics.

“The Romans, in their progress to universal dominion, when they conceived the project of subduing the refractory spirit of the Grecian republics which composed the famous Achæan league, began by sowing dissensions among them, and instilling jealousies of each other and of the common head ; and finished by making them a province of the Roman empire. The application is easy ‘If there are any foreign enemies, if there are any domestic foes to this country, all their arts, all their artifices will be employed to effect a dissolution of the union. This cannot be better done than by sowing jealousies of the federal head, and cultivating in each state an undue attachment to its own power.”

The statements given by persons yet living, and in the gazettes of that day, show the impression produced upon the public opinion on this occasion. The speech was received and perused with very great interest. “I well remember,” Chancellor Kent observes, “how much it was admired for the comprehensive views which it took of the state of the nation—the warm appeals which it made to the public patriotism—the imminent perils which it pointed out, and the absolute necessity which it showed of some such financial measure to rescue the nation from utter ruin and disgrace.”

The importance of the question, and the expectation of an animated discussion, had called together most of the distinguished men of the state, who awaited with anxiety the decision of the house. On taking the final vote, there appeared in favour of the impost, twenty-one, against it, thirty-six members.

To this address there was no reply The opposition neither attempted to justify their votes on this momentous question by argument, nor to invalidate the cogent eloquence of Hamilton. It was put down by a silent vote, which led to the remark, "that the impost was strangled by a *band of mutes*."\*

One other subject remained, of great importance and perplexity in any issue of events, whether New-York were to become an independent commonwealth, which she could not have long remained, or whether the union should be preserved. It was the long-agitated question of the New-Hampshire grants, or state of Vermont as it was then called, although not recognised by the confederation.

The letter of Hamilton to Governor Clinton, on his retirement from congress in seventeen hundred and eighty-three, stated the little probability of an adjustment of that question by any other means than by a federal court. The inhabitants of the district of country in dispute, had since that period been increasing in numbers, and it had at last become obvious, that the only possible mode by which New-York could maintain her jurisdiction, must be by a resort to force.

The continuance of the controversy had embittered the

\* Chancellor Livingston wrote to Hamilton on the 5th of March, 1787. "I received your information relative to the law for dividing the district I am much obliged by your attention to that subject While I condole with you on the loss of the impost, I congratulate you on the laurels you acquired in fighting its battles I shall endeavour to make myself here useful by effecting some changes in the representation I expect this will produce some attack on me, or my salary All I expect from my friends, will be, that they do not suffer such exertions to be made as will be dishonourable to me \* A liberal and honourable appointment, such as would enable me to live as I would wish constantly in New-York, I cannot expect from the prevailing party "

\* The attack was made, but was defeated by "his friends" Hamilton moved the highest sum. He soon after this framed a law, which passed, for the adjustment of the title of the Oneida purchase, affecting a very large portion of the state

angry feelings of the disputants. The ruling party in New-York had committed themselves with her citizens on this subject ; and while their domestic interests, the exposure of her frontier, the avoidance of a civil war, all combined to render an acknowledgment of the independence of Vermont unavoidable, not an individual, since Schuyler had failed in his efforts in seventeen hundred and eighty, had acquired sufficient influence in the legislature to carry with him the public mind. The situation of Clinton in reference to this subject was not free from embarrassment.

The question of territorial jurisdiction commenced in the year seventeen hundred and forty-nine, when Governor Wentworth made the grant of Bennington. It continued to be a source of difficulty between the governors of New-Hampshire and New-York, and was rendered more intricate by the conflicting orders of the privy council of Great Britain, until near the period of the revolution, when the people of Vermont determined upon open resistance.

In seventeen hundred and seventy-two, conventions of the different towns were held, and were renewed at intervals, which passed resolves, forbidding the inhabitants of the "grants" from accepting titles, holding offices from, or acting under the authority of New-York, and enforced their resolves with extreme severity.

In seventeen hundred and seventy-four, under the royal government, Clinton was appointed chairman of a committee of the New-York assembly, which reported various resolutions, reciting the violence of the grantees, denouncing their leaders, and recommending a proclamation for their apprehension, which was issued by Governor Tryon. A counter proclamation from Ethan Allen, and others of the proscribed, announced their determination to "resist unto blood." This state of things continued until the assembling of the continental congress, when, encouraged by the exploit of Allen at Ticonderoga, the "revolters" pe-

tioned that body, that they might be permitted to do military duty as inhabitants of "the grants," and not of New-York, and asked commissions to that effect. Congress recommended to them in reply, to submit to New-York, and to contribute their assistance, but without prejudice to their rights.

Thus situated, on the twenty-fourth of July, seventeen hundred and seventy-six, independence having been declared, a convention assembled, which, after two adjournments, met on the fifteenth day of January, seventeen hundred and seventy-seven, and proclaimed themselves a state.

In this altered position, Clinton, recently elected governor of New-York, by withdrawing the penalties of the proclamation, and by overtures to confirm the titles to the lands actually occupied, sought to sooth their discontents, but Allen, suspecting the policy of New-York, with inflexible determination, immediately prepared a force to suppress an organization which was forming to oppose the recently claimed supremacy of his state. Clinton, thus driven from his purpose of conciliation, openly took the ground that the authority of Vermont should in no instance be acknowledged, except in the alternative of submission or inevitable ruin. An appeal was then made to congress, and in the mean time, an union of the eastern and western districts of Vermont was consummated.

All hope of peaceable adjustment was by this act at an end, and the alternative of force was brought distinctly before the councils of New-York. The umpirage of congress, probably not sought sincerely by either party, and which, if the decision had been against Vermont, would have proved a nullity, was avoided, until New-York at last became convinced that her claims must be abandoned.

The governor, from the course to which he had been so conspicuously committed, from the circumstance that the

policy advised by Schuyler had been impeached on the ground that he was regardless of the rights of the state, and perhaps from an unwillingness to impair his own influence, partly derived from his scrupulous assertion of those rights, was little inclined to assume the open responsibility of surrendering so large a portion of her territory.

Under these circumstances, Hamilton, whose popularity had risen so high that he was contemplated as a candidate for the office of governor, felt it his duty to come forward, and on the fifteenth of March, introduced a bill "to authorize the delegates of New-York in congress, to accede to and confirm the independence and sovereignty of the people inhabiting the district of country commonly called Vermont."

On presenting the bill, he made a few observations, of which a brief sketch was published at the time, from recollection, giving an interesting view of the urgent motives which prompted the measure \*

The great extent of disputed territory which was owned by the inhabitants of the state of New-York, had created a very powerful opposition to it. A meeting of those having the largest interest in the question was held, and after frequent consultations, it was determined to make a strong appeal to the legislature. After much deliberation, the opponents of the bill resolved to apply to the assembly to be heard by counsel at the bar of the house, a mode of proceeding which, though of frequent occurrence before the British parliament, is believed to have been entirely novel in New-York.

The gentleman solicited to perform this duty was Richard Harrison, a lawyer and a scholar, distinguished for his ability, and learning, and probity. The bill was objected

\* Vermont had raised troops, and declared, that if no decision were pronounced by congress within two months after nine states had met, that she would resort to force

to by him, as unconstitutional, impolitic, and destructive to the property of the citizens.

As the constitution had expressly declared the counties of Cumberland, Gloucester, and Charlotte, which embraced the territory proposed to be ceded, as parts of the state, it was urged that the legislature could not sever them from it—that such a power had not been delegated to them—that, if delegated, it must have been to congress as the arbiters of peace and war—that such a dismemberment was only authorized by a case of extreme necessity, which was alleged not to exist. The presumption of danger from subsisting connections between Vermont and Canada, was denied. If it existed, where was the proof? The danger of the example of permitting a revolt of these counties was enlarged upon, and arguments were adduced to show that no public advantage, either in respect to revenue or other effects, would be derived from the admission of Vermont into the confederacy. The address was concluded with an earnest exposition of the rights of the proprietors of these lands to be indemnified by the state, and a suggestion of the appointment of commissioners to treat with the revolvers

Hamilton's reply is among the most able fragments of his eloquence which have been preserved. It fully met the objection to the act, which was drawn from that great principle of the social compact, that the chief object of government is to protect the rights of individuals by the united strength of the community; insisting that the efforts of a state were to be "proportioned to its abilities, warranted by a reasonable expectation of a favourable issue, and compatible with its eventual security; but that it was not bound to enter into or prosecute enterprises of a manifest rashness and folly, or which in the event of success would be productive of more mischief than good." He then reviewed the pretensions of Ver-



mont, and contrasted her power to resist with that of New-York to enforce these territorial claims.

From this topic he passed on to an examination of the constitutionality of the bill, asserting that the power of dismembering the state, under certain circumstances, was a necessary appendage of its sovereignty. Instances of such dismemberments were referred to, and the writers on international law were quoted to establish the right "to lop off a limb for the good of the body." From an exposition of the right, he proceeded to a review of the policy of this measure, in the course of which, he adduced facts to show that Vermont had borne such relations to Great Britain during the revolution as to justify the belief, that, should a collision arise, she would receive aid from their recent enemy.

The remaining questions were, how far New-York had a right to acknowledge the independence of Vermont, and how far she was bound to make compensation to the owners of the disputed territory. He urged the actual independence of Vermont as an answer to the first inquiry; stated, that as to territorial claims, the confederacy provided a tribunal for their adjustment, and insisted that the state was not under a strict obligation to make compensation to the losing proprietors. "The distinction," he said, "is this—if a government voluntarily bargains away the rights, or dispossesses itself of the property of its citizens in their enjoyments, possessions, or power, it is bound to make compensation for that of which it has deprived them; but if they are actually dispossessed of those rights or that property by the casualties of war, or by revolution, the state, if the public good requires it, may abandon them to the loss without being obliged to make reparation."

"In wars between states, the sovereign is never supposed to be bound to make good the losses which the subject sustains by the captures or ravages of the enemy, though

they should amount to the destruction of his whole property ; and yet nothing can be more agreeable to natural equity than that those who happen to be the unlucky victims of the war should be indemnified by the community ”— “ But in practice such a principle would be found attended with endless difficulties and inconveniences ; and therefore the reverse of it has been adopted as a general rule. The true reason is, the resources of nations are not adequate to the reparation of such extensive losses as those which are commonly occasioned by wars and revolutions, and it would, therefore, be contrary to the general good of society to establish it as a rule that there is a strict obligation to repay such losses. It is better there should be individual sufferings, than to admit a rule which would fetter the operations of government, and distress the affairs of the community. Generosity and policy may, in particular instances, dictate such compensations. Sometimes they have been made by nations, but much oftener omitted. The propriety of doing the one or the other must depend on circumstances in which the ability of the public will always be a primary consideration.”

As to the examples derived from Roman magnanimity, he remarked :—“ Neither the manner nor the genius of Rome are suited to the republic or age we live in. All her maxims and habits were military—her government was constituted for war. Ours is unfit for it ; and our situation, still less than our constitution, invites us to emulate the conduct of Rome, or to attempt a display of unprofitable heroism.”—“ One more observation will,” he said, “ conclude what I have to say The present situation of our national affairs appears to me peculiarly critical. I know not what may be the result of the disordered state of government. I am, therefore, the more solicitous to guard against danger from abroad. Gentlemen who view our public affairs in the same light in which they present them-

selves to my mind, will, I trust, vote with me upon the present occasion. Those, on the contrary, who think all is well, who suppose our government is full of energy, our credit high, our trade and finances flourishing, will probably see no room for any anxiety about the matter, and may be disposed to leave Vermont in its present state. If the bill should fail, I hope they never will have occasion to regret the opportunity they have lost."

At the end of this speech, the question was taken, and the bill recognising the independence of Vermont, on the condition of her entering into the confederacy, passed. By this well-timed measure a civil war was prevented, and another state soon after became a member of the union.

## CHAPTER XXIII.

[1787]

THE vote of the New-York legislature on the impost decided the fate of the confederation. The only hope of preserving an union of the states rested upon the issue of the contemplated convention.

The assembly of Virginia being the first state legislature in session after the adjournment of the commissioners at Annapolis, passed an act in October for the appointment of seven commissioners to meet at Philadelphia, and to join with the deputies of the other states, "in devising and discussing such alterations as may be necessary to render the federal constitution adequate to the exigencies of the times." New-Jersey was the second to act on this subject, appointing commissioners on the twenty-third of November, with powers similar to those previously granted by her. Pennsylvania chose delegates with like powers on the thirtieth of the succeeding month.

The report from Annapolis was submitted to congress soon after its date; but a determined opposition being made to the proposed convention, on the ground of its illegality, it was not acted upon: thus, tenacity of power grows with conscious weakness. When the legislature of Massachusetts assembled, Governor Bowdoin, still zealous for this great measure, sent them a message, in which, after a mention of the reasons that had induced the meeting at Annapolis to adjourn, he again declared his conviction of the importance of amending the confederation. Its

delegates to congress then appeared, and explained the motives by which they had been actuated.

King observed—"that the report of the commercial convention was before congress. Doubts had arisen as to the mode of agreeing upon commercial regulations. The confederation was the act of the people. No part could be altered but by consent of congress and confirmation of the several legislatures. Congress, therefore, ought to make the examination first; because, if it was done by a convention, no legislature could have a right to confirm it. Did any legislature sit for such a purpose? No. It must be referred to the people, and then what degree of assent was necessary to make it an article of the confederation? Whereas if it was conducted agreeably to the confederation, no such difficulty could exist. Besides, if congress should not agree upon a report of a convention, the most fatal consequences might follow. Congress were, therefore, the proper body to make alterations."

After adverting to the efforts of the several states, he remarked, that not more than half a million of dollars had been received from them in the last two years, that "it had become a subject of admiration how government existed; that so melancholy was the state of the federal treasury, that all men seemed to turn away from it as an evil which admitted of no remedy. If all the states could be brought into the continental impost, this resource might be anticipated, and the national credit strengthened in that way; but there remained two states which had not acceded to it—Pennsylvania and New-York. The situation of the former was known, and should that state comply, as there were some grounds to hope and expect, the danger of the union, and the love which New-York must entertain for the confederation, must induce their accession to the system." He closed his observations with a strong comment on the existing commotions in Massachusetts,

suggesting the probability that congress would make exertions to suppress them. Dana, another delegate, concurred in these views. Their speeches were published, and as no measures were taken for the appointment of a delegation to Philadelphia, great apprehensions were entertained by the advocates of a general convention, that their efforts would be rendered fruitless by the dissent of this leading member of the confederacy.

The hesitation of Massachusetts lent a sanction to the policy of the governor of New-York. There was in the constitution of that state an energy the more imposing, as contrasted with the weakness of the confederacy. This energy had been increased by a perverted construction of his powers, which concentrated the whole disposal of office in the chief magistrate.

The new congress met in the city of New-York on the second of February, three months of its term having expired, and elected General St. Clair as their president. Though without prerogative or patronage, that officer was understood to represent in his person the majesty of the nation. The appropriations and the ceremonial of his household all indicated such to have been the intention of congress.

In the same public hall was seen Clinton, exhibiting all the authority of his office and his influence over an obedient legislature. The effect on the common mind of withholding those observances which custom has connected with high station, was well understood by Clinton: a marked and studied neglect was manifested by him towards congress, as though he wished them to be regarded rather as intruders upon a sovereign state, than as the COUNCIL OF THE NATION. Yet he at the same time avowed the opinion, that the articles of the confederation were equal to the objects of the union, or with little alteration could be made so, and that the deputies to Annapolis ought to

have confined themselves to the expressed purpose of their errand

New-York gave the most prominent adversary and advocate of the union. The more obstinate the opposition of Clinton to enlarged views of the interests of the American people, the more zealous and determined were the exertions of Hamilton. All the influence of his attractive manners and generous hospitality was now seen. He mingled daily with the members of the federal government; his house was their constant resort, his conversation was full of the great theme of a more perfect union; and with earnest argument and wit he exposed the inconsistency of men who refused to confer upon congress an adequate fiscal power, for the reason that it was a single body without checks, and yet would seek to thwart every effort to constitute it differently. Having thus prepared the minds of that assembly,\* he hoped that their sanction of the proposed convention, so long withheld, might be obtained.

Though a president had been elected, nine states were not represented in congress until the fourteenth of February. The next day Hamilton delivered his speech upon the impost, in the presence of many of its members, who saw the mute vote rejecting it recorded.

It is the part of genius to select the moment to achieve its high purposes; and the day after this vote, notice was given of an intended motion for an instruction to congress to recommend the call of a convention. Its object was stated to be that "of revising the articles of confederation and perpetual union, by such alterations and amendments as *a majority* of the representatives shall judge proper and necessary, to render them adequate to the preservation and *government* of the union."

\* Speaking subsequently of a leading individual, who commenced his career as an earnest opponent of a national system, Hamilton remarked to a friend—"I revolutionized his mind."

This motion was brought forward on the seventeenth, and being so modified, at the instance of the leader of Clinton's party in the assembly, as to omit the words, "a majority," and to substitute that of "support" for "government," was agreed to. After the interval of a day, this instruction was laid before the senate, and it was ordered to be postponed. Of Clinton's majority in that branch, the most prominent persons were Haring and Yates.\* General Schuyler led the opposition. His weight of character would have been insufficient to carry this important resolution, but for the urgent circumstances of the moment. Some of the leaders of the rebellion in Massachusetts had taken refuge in New-York. On the day this resolution was laid before the senate, Schuyler moved that a proclamation should be issued for their apprehension. The fears of congress were also aroused, and on the same day a report then in progress, deferring the enlistment of federal troops, was postponed. Alarmed for the quiet of the state, the senate on the following day, "after considerable debate, by a majority of one vote, concurred in the proposed instruction."

To anticipate intrigue and gain the advantage of this momentary alarm, Hamilton's report from Annapolis was called up in congress the next day. That body was yet undecided. By some, their sanction of the convention, it was supposed, might stimulate, by others it was alleged that it would impede, the action of the states. Some looked with jealousy at a body so formed; others doubted its constitutionality. Amid this perplexity, the instruction of New-York was presented to them. Though supported by the votes of Massachusetts and Virginia, the recommendation it urged failed, and a resolution of a member from Massachusetts, after being amended, was passed. It re-

\* Abraham Yates.



ferred, as a justification for the proceeding, to the provision in the articles of the confederation for their alteration by congress, with the assent of the state legislatures, and to the recent instruction from New-York, and declaring that it was "the most probable mean of establishing in these states a firm national government," sanctioned the contemplated convention.\*

Having exerted the influence of New-York upon congress, Hamilton was eager to derive the benefit of the influence of congress upon that state. Five days after, he offered a resolution in the assembly, conforming to the recommendation of congress, for the appointment of five commissioners to meet in convention at Annapolis. This resolution being agreed to, was laid before the senate by Schuyler. That body did not dare to reject it, but, on motion of Haring, the number was reduced from five to three.

Yates then proposed to insert a proviso, that the alterations and provisions to the articles of confederation "should be *not repugnant to, or inconsistent with, the constitution of this state.*" This amendment, so decisive of the views of Clinton, was opposed, and was lost by the vote of the presiding officer.†

The resolution then passed the senate, was immediately concurred in by the house, and on the eighth of March, three commissioners, Yates, Hamilton, and Lansing, were appointed—Chief Justice Yates unanimously, Hamilton with two, Lansing with many dissenting voices. As the rule of the confederation of voting by states might be adopted, and as his colleagues were in the views of Clinton, Hamilton proposed, near the end of the session, to add two delegates. He observed, "I think it proper to apprise the

\* February 21, 1787

† Senate Journal of New-York, p 44-5, February 28, 1787.

house, of the gentlemen on some of whom I wish their choice to fall, and with a view to which I bring forward the present motion. Their abilities and experience in the general affairs of the country cannot but be useful on such an occasion. I mean Mr. Chancellor Livingston, Mr. Duane, Mr. Benson, and Mr. Jay; the particular situation of the latter, may require an observation. His being a servant of congress might seem an objection to the appointment; but surely this objection, if it had any weight, would apply with equal force to a member of that body. In the case of Mr. Lansing, the two houses appear to have thought there was no force in it, and I am persuaded there can be no reason to apply a different rule to Mr. Jay. His knowledge, abilities, tried integrity, and abundant experience in the affairs of the country, foreign and domestic, will not permit us to allow any weight to any objection which would imply a want of confidence in a character that has every title to the fullest confidence."

This motion prevailed in the assembly, but was defeated in the senate.

Hamilton soon after proposed to fix, by law, the sessions of the legislature alternately at Albany and New-York, hoping thus to counterpoise their local influences, and to have it in his power to retain a seat in the assembly. It being known that his professional engagements would not permit him to sojourn at Poughkeepsie, that place was selected for the meeting of the next legislature, and he declined a re-election.

The states of Delaware, the Carolinas, and Georgia, either not alive to, or disregarding the supposed constitutional difficulty, had elected delegates without waiting the action of congress. The address of the Annapolis convention was again submitted to the legislature of Massachusetts, and it was referred to a committee, whose report, from the pen of Samuel Adams, was accepted on the same

day upon which the instructions of New-York were proposed to congress. The delegates were authorized to "consider the trade and commerce of the United States, and how far a uniform system in their commercial intercourse and regulations may be necessary for their common interest and permanent harmony ; and also to consider how far it may be necessary to alter any of the articles of the present confederation, so as to render the constitution of the federal government more adequate to the exigencies of the union ; and what further powers may be necessary to be vested in congress for the common welfare and security, and with them to form a report for that purpose : such alterations and additions as may be made, to be, however, consistent with the republican spirit and genius of the present articles of confederation, provided that the said commissioners on the part of this commonwealth are hereby particularly instructed by no means to interfere with the fifth article of the confederation, which provides for the *annual election* of delegates in congress, with a power reserved to each state to *recall* its delegates, or any of them, within the year ; and which also provides that no person shall be capable of being a delegate for more than three years in any term of six years, or, being a delegate, shall be capable of holding any office under the United States, for which he, or any other for his benefit, should receive any salary, fees, or emoluments of any kind." This embarrassing restriction was removed in consequence of the recent resolution of congress, and, on the ninth of April, five deputies were commissioned with powers conforming to that resolution.\*

\* On the 7th of January, 1787, King, after speaking of the calamitous events which threatened the country, wrote to Gerry from New-York " You have seen the Virginia law for the appointment of delegates to a convention in Philadelphia in May

" General Washington, Wythe, Randolph, Madison, and others, are ap-

The legislature of Connecticut assembled in May. The proposition for a convention was warmly opposed, but was sustained with ability, and prevailed. Late in June, New-Hampshire also chose delegates, and thus all the states were represented with one exception, Rhode Island having refused to co-operate in this great measure.

As the constitution of the United States was a deliberate act of the people, and was formed in reference to their experience of the evils of a mere college of states, it may be interesting to advert briefly to the progress of American experiment in its advances towards that result.

The confederation of the New-England colonies, of the year sixteen hundred and forty-three, was the first effort towards an union of the provinces. It was a league offensive and defensive to provide against impending wars, committing to an annual congress of two delegates from each colony the duty of deliberating upon all matters of peace and common concern; the results of which deliberations were binding upon the confederacy, if three-fourths of its members concurred.

This compact continued forty years; after its dissolu-

pointed for that convention Pennsylvania has appointed Mifflin, the two Morris's, Fitzsimmons, and three others, on the part of that state Hamilton, who is a member of the assembly of this state, will exert himself to induce them to send members, Jay, and others, are opposed to the measure, not alone because it is unauthorized, but from an opinion that the result will prove inefficacious General Washington will not attend \* \* \* \* If Massachusetts should send deputies, for God's sake be careful who are the men, the times are becoming critical, a movement of this nature ought to be carefully observed by every member of the community" He subsequently wrote: "Do you attend the legislature? How will they stand on the plan of a convention at Philadelphia? For a number of reasons, although my sentiments are the same as to the legality of this measure, I think we ought not to oppose, but to coincide with this project Let the appointments be numerous, and, if possible, let the men have a good knowledge of the constitutions and various interests of the several states, and of the good and bad qualities of the confederation"—Feb 11, 1787 *Life of Gerry.*

tion, congresses were held at different times to consult upon measures of common interest, the most important of which, was that of seventeen hundred and fifty-four, convened at the instance of the parent country, to prepare for the contingencies of a war with France.

This congress, having more enlarged views than its predecessors, resolved "that an union of the colonies was absolutely necessary for their preservation," and proposed a plan of federal government, consisting of a general council of delegates to be tri-annually chosen by the provincial assemblies, and a president-general to be appointed by the crown. In this council were to be invested, subject to the ultimate negative of the king, the rights of war and peace with the Indian tribes, the power of raising troops, building forts, equipping vessels of war, and of making laws and laying and levying general duties, imposts, and taxes for those purposes. This projected union was disapproved, not only by the crown, but by each colonial assembly, from mutual jealousy.

A congress for the purpose of resisting Great Britain, assembled, at the instance of Massachusetts, in seventeen hundred and sixty-five, and digested a bill of rights, in which the sole power of taxation was declared to reside in their own colonial legislatures. This assemblage was the precursor of that of seventeen hundred and seventy-four, which concerted the opposition that terminated in the independence of the United States. Its authority was discretionary and unlimited, until defined by the articles of confederation, which have formed so prominent a topic as to render a further exposition of them unnecessary.

This succinct statement shows that, with the exception of the plan of seventeen hundred and fifty-four, which, had it been carried into effect, might have terminated in a system modelled upon that of Great Britain, no approximation to a general government had been made. Nothing

more had been contemplated beyond the delegation of authority for purposes of common defence, under a joint commission, to a general deputation of the colonies.

The first elective governments, in their proper acceptance, were those formed in each colony under the recommendation of congress; and of these, the earliest was that of New-Hampshire, established in January, seventeen hundred and seventy-six; and the latest, that of Massachusetts, in seventeen hundred and eighty.

Though these state constitutions varied in many particulars, they show a general concurrence of opinion throughout America, in some essential points. Most of them divided the legislature into two branches, and established a judiciary, to hold during good behaviour. The most prominent defect, was the constitution of the executive department, he being, with few exceptions, a mere pageant and creature of the legislature, often only forming part of a council.

The weakness of this department was probably the result of two causes; the colonial governors appointed by the crown, having been the obnoxious instruments of its usurpations, and these constitutions being formed at a time when the congress had indefinite powers, before the colonies aspired, as states, to a rival sovereignty.

The association of a revisionary council with the executive, while it diminished the responsibility, lessened the energy, dignity, and independence of the office; and as the check of a second branch of the legislature was rather nominal than real, the democratic influence acquired a large ascendancy.

The effect of this on the general councils of the nation has been indicated. In the local government of such states as had fulfilled their federal duties, the inequality caused by the imperfect machinery of their fiscal systems had induced a repugnance to the laws. In the delinquent

states, this feeling had been increased by their relaxed policy.

The momentous problem was now to be solved, whether the affairs of this extensive confederacy were to be carried on by a halting compromise between public duties and abstract state rights, until the union should cease, or whether its humiliation and sufferings had prepared the public mind for the establishment of a vigorous and stable national government.

As it may be interesting hereafter to advert to the opinions of leading individuals at this eventful crisis, they are succinctly given.

Jay was the advocate of a government of proper departments : a governor-general, limited in his prerogatives and duration ; an upper and a lower house—the former appointed for life, the latter annually ; the governor-general, (to preserve the balance)—with the advice of a council, formed for that only purpose of the great judicial officers—to have a negative on their acts “ Our government,” he said, “ should, in some degree, be suited to our manners and circumstances, and they, you know, are not strictly democratical ” He thought “ the more power that was granted to this government, the better,” the states retaining only so much as may be necessary for domestic purposes ; all their principal officers, civil and military, being commissioned and removable by the national government, which was to derive its authority from the people, the only source of just authority.”\*

Knox was in favour of a government of three departments : an assembly, chosen for one, two, or three years ; a senate for five, six, or seven ; the executive to be chosen by the legislature for seven years, liable to impeachment and trial by the senate : all national objects to be designed and

\* Jay to Washington, January 7, 1787

executed by the general government, without any reference to the local governments, and its laws to be enforced upon these governments by a body of armed men.\*

It was the opinion of Madison, that it would be well to retain as much as possible of the old confederation, though he doubted whether it might not be better to work the valuable articles into the new system, instead of engrafting the latter on the former. He proposed, as the ground-work, a change in the principle of representation, abolishing the equality of suffrage in the national councils. In addition to the present federal powers, he would have armed the national government with positive and complete authority in all cases which require uniformity, and with a negative *in all cases* on the legislative acts of the states, as heretofore exercised by the kingly prerogative. This he regarded as absolutely necessary, and as the least possible encroachment on the state jurisdictions. The national supremacy also to be extended to the judiciary department. The officers administering the executive departments, appointable by the supreme government. The legislature to consist of two branches: one eligible by the people at large, or *by the legislatures*, for a limited period; the other, of fewer members, for a longer term, ceasing in rotation. He thought, as a further check, that a council of revision might be superadded, including the great ministerial officers, and that a national executive will also be necessary, but said that he had "scarcely ventured to form his own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed."† The right of coercion, he further stated, should be expressly declared. To obviate its exertion, he hoped the negative on the state laws might be sufficient, or perhaps some defined objects of taxation might be submitted

\* Knox to Washington, January 14, 1787

† Madison to Washington, April 16, 1787



along with commerce to the general authority. The system to be ratified by the people.

In the sketch of Hamilton's early life, his progressive opinions on this subject have been shown. In his anonymous letter to Robert Morris, written in seventeen hundred and seventy-nine, he is seen to have first proposed the instituting a good scheme of administration, throwing "the public business into proper executive departments. By a plan of this kind," he remarked, "we should blend the advantages of a monarchy and a republic in a happy and beneficial union." His letter to Duane of the following year, gives a fuller development of his views.

He there states that "the fundamental defect is a want of power in congress," and that "the idea of an uncontrollable sovereignty in each state, over its internal police, will defeat the other powers given to congress, and make our union feeble and precarious."

His fear was of partial combinations among the states subversive of the general one. "There is a wide difference," he observed, "between our situation, and that of an empire under one simple form of government, distributed into counties, provinces, or districts, which have no legislatures, but merely magistratical bodies to execute the laws of a common sovereign. There the danger is, that the sovereign will have *too much power*, and oppress the parts of which it is composed. In our case, that of an empire composed of confederative states, each with a government completely organized within itself, having all the means to draw its subjects to a close dependence on itself, the danger is directly the reverse." After indicating the necessity of giving to the confederacy perpetual funds, he mentions "the want of a proper executive," that "congress is properly a deliberative corps, and forgets itself when it attempts to play the executive." His remedy was a convention of all the states, with full authority to conclude

finally upon a general confederation. This confederation to have complete sovereignty, except "as to that part of the internal police which relates to the rights of property and life among individuals, and to raising money by internal taxes"—"It is necessary," he said, "that every thing belonging to this, should be regulated by the state legislatures."

The project of appointing a supreme dictator and vicedictator, evidently excited his apprehensions. He then saw the necessity of a radical change in the political structure, and in his letter to Morris of the following year, renewing his suggestion of a convention, he states the necessity of a final and irrevocable amendment "of the present futile and senseless confederation." The numbers of the *Continentalist* of the same period, indicate similar views. He there proposes to give to congress the collection and appropriation of a national revenue.

The next, though not fully developed exposition of his opinions, is seen in his resolutions of seventeen hundred and eighty-three. These contemplated "a federal government, with efficacious authority in all matters of general concern," having its legislative, executive, and judicial authorities deposited in distinct and separate hands—"a federal judicature," with appellate jurisdiction, "taking cognizance of all matters of general concern in the last resort, especially those in which foreign nations and their subjects are interested"

Though these resolutions were abandoned for want of support in congress, they could not be without influence on some of its members. That they had such an influence, is to be inferred from the fact that Higginson was prominent in urging Massachusetts to meet in general convention, and that Madison, though restrained by an apprehension of the influence of some powerful opponent in Virginia, individually wished that no objections should be presupposed there.

Washington would have vested congress with absolute powers in all matters relative to the great purposes of war and of general concern, reserving to the states only those of local and internal polity \* “I do not conceive,” he said, “that we can exist long as a nation, without having lodged somewhere a power which will pervade the whole union in as energetic a manner as the authority of the state governments extend over the several states. The commotions in the eastern states exhibit a melancholy proof of what our transatlantic foe has predicted ; and of another thing, which is still more to be regretted, and is yet more unaccountable, that mankind, when left to themselves, are unfit for their own government. Influence is not government. Thirteen governments, pulling against each other, and all tugging at the federal head, will soon bring ruin on the whole ; whereas, a liberal and energetic constitution, well checked, and well watched, to prevent encroachments, might restore us to that degree of respectability and consequence to which we had the fairest prospect of attaining”—“I confess that my opinion of public virtue is so far changed, that I have my doubts whether any system, without means of coercion in the sovereign, will enforce due obedience to the ordinances of a general government ; without which, every thing else fails.

“Persuaded I am, that the primary cause of all our disorders lies in the different state governments, and in the tenacity of that power which pervades their whole systems.”

These sentiments of Washington and Hamilton were those of men familiar with the practical operation of the existing system, in war and in peace : who had seen and felt the evil of conflicting sovereignties, and whose re-

\* August 15, 1786.

searches and reflections had compelled them to distrust federate institutions.\* Though the opinions which have been quoted were those of men of great weight in the most important members of the union, yet they were not general. The smaller states, while they sought the protection of a more efficient general government, would repel any proposal to relinquish that equal suffrage in the public councils, which they had extorted from their associates amid the pressure of the revolution. In the large states, leading individuals, who did not desire a dissolution of the confederacy, would prefer an increase of the relative influence of their states, but were embarrassed as to the quantity of power to be conferred. Both would incline, as a middle point, to a constitution of enumerated powers, limited to those primary objects, trade and revenue, to which they had found their separate legislation incompetent.

With such models, and amid a great diversity of opinions and interests, the federal convention met at Philadelphia on the fourteenth of May, seventeen hundred and eighty-seven, when, a majority of states not being represented, it adjourned to the twenty-fifth of that month.

On that day, nine states having appeared, General Washington was, on motion of Robert Morris, chosen to preside, and Major Jackson, at the instance of Hamilton, was elected secretary. A committee, of Wythe, of Virginia, Charles Pinckney, of South Carolina, and Hamilton, were appointed to frame the standing rules for its proceedings. These required seven states to constitute a quorum; that all questions were to be decided by the greater number of states fully represented, and that all committees were to be appointed by ballot. It is to be remarked, that no provision was made in the first instance for secrecy of debate :

\* See Washington's Writings, vol. ix. Appendix, No iv.

additional rules were adopted on motion of Pierce Butler, which prescribed "that no copy of any entry on the journal be taken without the leave of the house;" that it should be inspected by members only, and "that nothing spoken in the house be printed, or otherwise published or communicated, without leave." So sedulous were the convention as to the first of these restrictions, that it appears by Madison's report of the debates of the twenty-fifth of July, seventeen hundred and eighty-seven, that a motion that the members of the house might take copies of the resolutions which had been agreed to, was negatived. As to the last, the rule was never rescinded.\* In reference to it, a reply, published by Hamilton in seventeen hundred and ninety-two, to anonymous charges,† containing a misrepresentation of his course in the convention, and stated by him "to be of a nature to speak the malignity and turpitude of the accuser, denoting clearly the personal enemy in the garb of the political opponent," mentions "that the deliberations of the convention, which were carried on in private, were to *remain unmolested*. And every prudent man," he observed, "must be convinced of the propriety of the one and the other. Had the deliberations been open while going on, the clamours of faction would have prevented any satisfactory result. Had they *been afterwards disclosed*, much food would have been afforded to inflammatory declamation. Propositions, made without due reflection, and perhaps abandoned by the proposers themselves on more mature reflection, would have been handles for a profusion of ill-natured accusation."

Washington gave as a reason "for not relating any of the proceedings, that the rules of the convention *prevented* him. And nothing," he said, "being suffered to transpire,

\* The journal was ordered to be published, March 27, 1818

† In the National Gazette, established by Jefferson and Madison.

*no minutes of the proceedings have been, or will be inserted in this diary.*"\*

This solemn obligation, which no act of any other body could annul, was, until recently, sacredly adhered to by every member of the convention except Luther Martin, who did not disclose the opinions of individuals, but gave a statement of the proceedings to the legislature of Maryland. Notes were taken by Chief Justice Yates, who, "though often solicited, refused to permit them to be published, not only because they were originally not written for the public eye, but because he conceived himself under *honourable obligations to withhold their publication.*"†

Madison, it appears, regarded this obligation in a different light. "The curiosity," he observes, "I had felt (as to the most distinguished confederacies of antiquity,) *determined me to preserve, as far as I could, an exact account of what might pass in the convention while executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity, by an authentic exhibition of the objects, the opinions, and the reasonings from which the new system of government was to receive its peculiar structure and organization.*" He adds, that "with a very few exceptions the speeches were neither furnished, nor revised, nor sanctioned by the speakers. Among these exceptions, he includes the speech of Hamilton, "who," he says, "happened to call on me when putting the *last hand* to it, and *who acknowledged its fidelity*, without suggesting more than a *very few verbal alterations*, which were made"‡

\* 9 Washington, 541.

† Secret Proceedings, p 306—These were copied by Lansing, disposed of by the widow of Yates, and published by Genet (the former minister of France) in 1821

‡ Debates in the Federal Convention, v. 2, p 717.—Madison survived every member of that body

Believing, nevertheless, that no "authentic exhibition" of these debates exists, a full view of the formation of the constitution will not be attempted. Contemporary expositions of it, minutes taken by Hamilton in the course of and for the purpose of debate, which will be only resorted to as far as absolutely necessary for his vindication, public statements extorted from him in self-defence, and the notes of Yates previously referred to, are the only materials at command. To cull from these such facts as may enable some faint judgment to be formed of Hamilton's agency in framing the constitution, or in imparting to it its character, of his position in the convention, of his theoretical opinions, plans, and propositions, will be the sole aim of the following narrative.

On the twenty-ninth of May, after some preliminary remarks, fifteen propositions, concerning the American confederation and the establishment of a national government were laid before the convention by Edmund Randolph, then governor of Virginia.\*

It then decided to resolve itself into a committee of the whole on the succeeding day for their consideration, when Charles Pinckney,† of South Carolina, addressed the convention. After depicting the alarming situation of the country, a situation to be attributed "to the weakness and impropriety of a government founded on mistaken principles, incapable of combining the various interests it is intended to unite and support, and destitute of that force and energy without which no government can exist, he proceeded to indicate the principal defects of the confedera-

\* Madison, 715, says "The resolutions introduced by Governor Randolph were the result of a consultation on the subject, with an understanding that they left all the deputies entirely open to the lights of discussion, and free to concur in any alterations and modifications which their reflections and judgments might approve"

† Not General Charles Cotesworth Pinckney

tion—defects so great that he was convinced that it would be politic in the convention to determine that they will consider the subject *de novo*; that they will pay no further attention to the confederation than to consider it as good materials, and view themselves at liberty to form and recommend such a plan as, from their knowledge of the temper of the people, and the resources of the states, will be most likely to render our government firm and united.”

With these prefatory remarks, Pinckney submitted his plan of government. He then proceeded to comment upon it. From these comments it appears that he contemplated a legislature of two branches: the first to consist of delegates chosen by the *states*, in numbers according to their relative importance, to vote per capita; a senate, elected by the house of delegates, upon “proportionable principles, which, though rotative, will give that body a sufficient degree of stability and independence;” each class to be elected for four years. The executive to be appointed septennially, but re-eligible. If septennial appointments were supposed to be too frequent, Pinckney stated that he would have “no objection to elect him for a longer term.” He was to have a council of revision, and among his other powers “that of convening and proroguing the legislature upon special occasions;” and of appointing “all officers except judges and foreign ministers.” A supreme judiciary to be instituted by congress, to take cognizance of all officers of the United States, of questions arising on the law of nations, the construction of treaties, and of the regulations of congress in pursuance of their powers, and also courts of admiralty in the several states

Congress were to have the exclusive powers then vested in the confederation, and also the regulation of commerce; the raising money by impost, and of troops in peace and war; with a proviso that, as to all cases which then re-



quired the assent of nine states, and as to acts regulating trade, and for levying an impost or raising troops, "the assent of two-thirds of both houses should be required."

After this exposition of Pinckney's plan,\* it was resolved that the Virginia propositions should with it be referred to a committee of the whole convention.

The discussion of the first six occupied two days. The result was a declaration that "a national government ought to be established, consisting of a supreme legislative, judiciary, and executive ;" all the states concurring except Connecticut and New-York—Hamilton voting in favour of the proposition. The question whether the right of suffrage in the national legislature ought to be apportioned to the quotas of contribution, or to the number of free inhabitants, (Hamilton urging the latter,) was postponed. Pennsylvania alone opposed the division of the legislature into two branches. A majority were in favour of the election of the first branch by the people, as had been the practice of

\* This statement is derived from a pamphlet published in 1788, entitled, "Observations on the plan of government submitted to the federal convention, by Mr Charles Pinckney"—No 2687 of select tracts of New-York Historical Society. A comparison of the plan in the Observations, with that on the journals, *furnished by Pinckney*, shows great dissimilarity. The "observations" have no reference to an election of the house of representatives by the *people*. On the contrary, it will be perceived by the journal of the sixth of June, that Pinckney proposed their election by the state legislatures. The power of appointment is given, in the "observations," to the executive, *without the consent of the senate*, which is required by the journal plan. They propose a council of revision, not contained in the journal plan, gave the decision of territorial disputes to a court constituted as directed in the confederation. The plan on the journal vests it in the senate. The journal plan requires the assent of two-thirds of the members of congress present only in the enactment of laws regulating commerce. The "observations" speak of *seventeen* articles. The journal plan contains *sixteen*. The "observations" refer to the eighth article as relating to the post office. The eighth article of the journal plan relates solely to the executive power. The numerical discrepancy occurs in other instances.

Rhode Island and Connecticut under the confederation. The proposition that the second should be chosen by the first branch, out of persons appointed by the state legislatures, was rejected ; and it was declared that its members should be elected by the state legislatures. The sixth resolve gave to each branch the right of originating acts, and conferred on the national legislature the legislative rights vested in congress by the confederation, and empowered it to legislate in all cases to which the separate states were incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation, and to negative all laws of the states contravening, in its opinion, the articles of union, or any treaties subsisting under the authority of the union—the last clause being suggested by Franklin. It was approved in this form, after rejecting a section authorizing a resort to the force of the union against any delinquent state.

The seventh resolution was considered on the first of June. It declared that a national executive be chosen by the legislature for a term of years, with a fixed compensation, not to be increased or diminished so as to affect the existing magistracy, which was to be ineligible, and, besides a general authority to execute the national laws, that it ought to enjoy the executive rights vested in congress by the confederation

A motion of Wilson, that it should consist of a single person, was postponed, when Madison, urging that its powers ought first to be defined, offered an amendment conferring on it the power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers, not legislative or judiciary in their nature, as may from time to time be delegated by the national legislature. The powers to execute the laws, and to appoint to office, were approved ; but the last indefinite clause was rejected, Massachusetts,

Virginia, and South Carolina voting for it. The term of office was next established at seven years

Until this period of the proceedings, New-York was represented by Hamilton and Yates, but on the second of June, Lansing having taken his seat, Hamilton's vote was merged in that of his colleagues

Immediately after, a proposal was made to postpone the resolution respecting the executive, in order to take up that relating to the second branch of the legislature. only three states voted in its favour. A motion was then made by Wilson, that the executive magistracy should be elected by electors chosen in districts of the states, in whom the executive authority of the government should be vested. This motion was negatived, seven states being against it; the vote of New-York divided, and its election by the national legislature being approved To control this great object of jealousy, a proposition was made that it should be removable by the national legislature. This was defeated, but it was declared to be ineligible a second time; and instead of giving the legislature a general power of removal, a provision, derived from the constitution of North Carolina, rendering the executive removable on impeachment, and conviction of malpractice or neglect of duty, was, at the suggestion of Williamson, substituted. It was again moved that the executive should consist of one person. The subject was now discussed at large, Butler, Gerry, Charles Pinckney, Sherman, and Wilson being in favour of a single, Madison and Randolph of a plural executive.

In the letters written prior to the meeting of the convention by Madison to Washington in reference to the executive, he is seen to have stated that he had "scarcely ventured to form his own opinion *yet*, either of the manner in which *it* ought to be constituted, or of the authorities with which *it* ought to be clothed." This language

would seem to imply that he then contemplated a *plural* magistracy. He now observed, "the way to prevent a majority from having an interest to oppress the minority, is to enlarge the sphere" "Elective monarchies are turbulent and unhappy." "Men are unwilling to admit so decided a superiority of merit in an individual, as to accede to his appointment to so pre-eminent a station. If *several* are admitted, as there will be many competitors of equal merit, they may be all included—contention prevented, and the republican genius consulted."\*

Randolph followed. He remarked, that "the situation of this country was peculiar. The people were taught an aversion to monarchy; all their constitutions were opposed to it. The fixed character of the people was opposed to it. If proposed, it will prevent a fair discussion of the plan. Why cannot three execute? Great exertions were only requisite on particular occasions. Safety to liberty was the great object; legislatures may appoint a dictator. He spoke of the seeds of destruction; slaves might be easily enlisted. The executive may appoint men devoted to them, and even bribe the legislature by offices. The chief magistrate will also be free from impeachment."

Wilson answered, alleging that the extent of the country, and the diversity of manners, precluded the dangers alluded to. "A confederated republic," he observed, "unites the advantages and banishes the disadvantages of other kinds of government. Rendering the executive ineligible," he declared, "was an infringement of the right of election."

Bedford concurred in the opinion, that the executive should be re-eligible. He remarked, that "peculiar talents were requisite for the executive; therefore, there ought to be an opportunity of ascertaining his talents, and therefore frequent change."

\* Hamilton's MSS. notes, vol 1, p 74—Madison does not give these remarks—Reports of 1st and 2d June, vol 2, Madison Papers, p 762—783

The question being taken, seven states voted in favour of a single executive New-York, (Yates and Lansing giving the vote,) Delaware, and Maryland in the negative

The eighth resolve proposed a council of revision, to be composed of the executive and of a part of the judiciary. It was to be empowered to revise every act of the national legislature before it should operate, and of the particular legislatures of each state, before a negative thereon should be final. The dissent of the council to amount to a rejection, unless the act of the national legislature was again passed, or that of a particular state should be again negatived by the vote of a certain number of the members of each branch. Madison was zealous for this revisionary council Hamilton was averse to it, from the "danger that the executive, by too frequent communication with the judicial, may corrupt it." As to the argument that this negative would not be used, he remarked, "it would go so far as to prove that the revisionary power would not be exercised, and therefore was useless." He seconded a motion of Wilson to vest an unqualified negative in the executive. This proposal was rejected, but a modified provision passed, giving this negative to the executive, unless two-thirds of the legislature should concur, thus dispensing with the council of revision.

The ninth resolve contemplated a national judiciary, to hold during good behaviour, to receive a compensation not to be increased or diminished so as to affect the incumbents It was to consist of a supreme appellate, and inferior tribunals, whose jurisdiction was to extend to piracies and felonies on the seas, and captures from an enemy; to cases in which foreigners or citizens of other states might be interested, or which respected the collection of the revenue; to impeachments of any national officer, and questions involving the national peace and harmony. Wilson moved that the judiciary should be appointed by the

executive. Madison was opposed to this. He thought that the executive should by no means make the appointment, and pursuing the policy of Virginia, which gave the appointment to the legislature, he proposed to vest it in the second branch.

A provision for the admission of new states, was in the next place adopted. On the sixth of June, proposals to give the election of the first branch of the national legislature to those of the several states, and to annex a council of revision to the executive, to be composed of the national judiciary, were renewed, and failed. It was urged in favour of the first proposition, that if "the legislatures did not partake in the appointment, they would be more jealous of the general government; *and* that the state legislatures ought also to elect the senators, so as to bring into it the sense of the state governments," and thus "lead to a more respectable choice."

Madison contended, that at least one branch should be chosen by the people. He stated that\* there were "two principles on which republics ought to be constituted. One, that they should have such an extent as to render combinations on the ground of interest difficult. The other, by a process of election calculated to refine the representation of the people."†

\* Hamilton MSS v 1, p 75

† In reference to these principles, this comment by Hamilton is preserved

"Maddison's theory Answer —There is truth in both these principles, but they do not conclude as strongly as he supposes The assembly, when chosen, will meet in one room, if they are drawn from half the globe, and will be liable to all the passions of popular assemblies

"If more *minute links* are wanting, others will supply them Distinctions of eastern, middle, and southern states, will come into view, between commercial and non-commercial states Imaginary lines will influence, &c.

"The human mind is prone to limit its view to near and local objects Paper money is capable of giving a general impulse It is easy to conceive a popular sentiment pervading the eastern states" Madison also observed,

The election of the second branch by the state legislatures was proposed, and, after the rejection of a motion that it should be chosen by the people, was passed unanimously.

The term of service of the first branch was fixed at three, that of the second branch at seven years. The members were to receive fixed stipends out of the national treasury, and to be ineligible to any office established by a state, or by the United States, (except those peculiarly belonging to the functions of the respective branch,) during the term of service, and under the national government for one year after its expiration. The restriction on their re-eligibility, and the right to recall those of the second branch, were expunged. An important motion was now made as to the power to be confided to the legislature. It was proposed by Charles Pinckney, and seconded by Madison, that it should have a negative on *all* laws of the states which to it shall appear improper. This was sustained by only three states—Massachusetts, Pennsylvania, and Virginia.

After some discussion of the mode of appointing the executive, the rule of suffrage now existing as to the choice of the first branch of the legislature was adopted, and a proposal was made to give to each state an equal vote in the second branch.

Wilson and Hamilton urged that the rule adopted as to

“that large districts are less liable to be influenced by factious demagogues than small” “This,” Hamilton noted, “is in some degree true, but not so generally as may be supposed. Frequently small portions of large districts carry elections. An influential demagogue will give an impulse to the whole. Demagogues are not always *inconsiderable* persons. Patricians were frequently demagogues. In large districts, characters are less known, and a less active interest is taken in them.”

“One great defect of our state governments is, that they do not present objects sufficiently interesting to the human mind.”

the first should govern in the choice of the second branch. They prevailed for the moment. A guarantee of a republican constitution, and of its existing laws to each state, was unanimously approved. It was declared that a provision ought to be made for the amendment of the constitution; and that the legislative, executive, and judiciary of each state ought to be bound by oath to support the articles of union. After an approval of the fifteenth resolve, that the amendments to the confederation with the approbation of congress should be submitted to an assembly, or assemblies, elected by the people, the Virginia resolutions were reported to the house on the thirteenth of June.

During the discussion of these resolutions, such of the delegates from Connecticut, New-York, New-Jersey, Delaware, and Maryland, as were in favour of a larger retention of power in the states, prepared a series of resolves, which were on the fifteenth of June submitted by Paterson. They were designated "the Jersey plan." This plan contemplated an enlargement of the powers of congress, without any change in the structure of the government—an apportionment of the ratio of contribution to the population—the election by congress of a plural federal executive—a federal judiciary to be appointed by the executive, to hold during good behaviour—a provision rendering the acts of congress and treaties the supreme law, with compulsory authority over the states by the national force.

This scheme being referred to a committee of the whole house, with a view to bring the respective systems into full contrast, it was moved by Rutledge, seconded by Hamilton, that the amended resolutions from Virginia be recommitted. The broad question, whether a national government, or mere articles of confederation were to be recommended, was now presented. The debate was open-



ed on the sixteenth of June, by Lansing. He stated, that the national system proposed to draw the representation from the whole body of the people, without regard to the state sovereignties. That the substitute proposed to preserve the state sovereignties. What were the powers under which the convention acted? "Different legislatures had a different object," but the general purpose was to "revise the confederation." "Independent states cannot be supposed to be willing to annihilate the states." "The state of New-York would not have agreed to send members on this ground."

It is "in vain," he said, "to devise systems, however good, which will not be adopted." "If convulsions happen, nothing we can do will give them a direction. The legislatures cannot be expected to make such a sacrifice." "The wisest men in forming a system from theory are apt to be mistaken." "The present national government has no precedent, or experience to support it," and the "general opinion was, that certain *additional* powers ought to be given to *congress*."

He was followed by Patterson, who observed, first, that their plan accorded with their powers; second, that it accords with the "sentiments of the people. If the confederation was radically defective, we ought to return to our states and tell them so. He came not here to sport sentiments of his own, but to speak the sense of his constituents." The "states treat as equal, the present compact gives one *vote* to each state. By the articles of the confederation, 'alterations are to be made by congress, and all the legislatures.' All the parties to a contract must assent to its dissolution. The states collectively have advantages, in which the smaller states do not participate; therefore individual rules do not apply."

The "force of government," he observed, "will not depend on the proportion of representation, but on the quan-

tity of power." "A check is not necessary in a general government of communities, but in an individual state the spirit of faction is to be checked" "How have congress hitherto conducted themselves? The people approve of congress, but think they have not power enough"

On a comparison of the different schemes of government then before the convention, it is seen that Pinckney would have clothed the legislature with the powers vested in congress by the confederation, and also with the regulation of commerce, the raising money by impost, and with the control of the national force. The Virginia plan would have conferred on the government powers supreme in all questions of national interest; a negative on the laws of the states, with an express declaration of a power to exert the common force against a delinquent state.

Pinckney also proposed a single executive, while the Virginia plan, having confided unlimited powers to the legislature, would have vested the execution of those powers in a plural magistracy, ineligible a second time, controlled by a council of revision constituted from the judiciary, which would thus have become a political agent—those powers to be exercised by a resort to force; to obviate which, Madison is seen to have proposed a negative on the laws of the states.

The Jersey plan was more objectionable. It created a single legislative body, with the command of the purse and the sword, derived its authority from the states; established an equality of suffrage; proposed that a minority should govern; contemplated partial objects of legislation;\* gave no negative upon that of the states; created a plural executive, removable on the application of a majority of the executives of the states, without any negative on the national legislature; and a judiciary, to be appoint-

ed by the executive, with power to try impeachments of federal officers, but without any other original jurisdiction, and without inferior tribunals.

Such were the forms of government in contemplation for an empire of almost boundless territory, and destined to contain a countless population

As neither of these forms was adopted, and as the final result was a compromise, it becomes necessary, in order to judge correctly of the extent of Hamilton's influence upon the character of that compromise, to trace the successive opinions of leading members of the convention.

With this view, it will be remarked, while the plan of Madison and Randolph submitted it as an open question, whether "the right of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants," that Hamilton was the first to urge the latter as the true basis of a republican government \*

Both Hamilton and Madison agreed that the choice of the first branch of it should be by the people; but while Hamilton would have derived the second branch, or senate, also from the people,† Madison preferred that it should be chosen by the first branch.

The proposition of Virginia gave the choice of the executive department of the government to the national legislature. Hamilton, pursuing the great principle of a popular government, was in favour of an executive to be chosen by the people in districts through the medium of electors.

Madison was the advocate of a plural executive, and

\* Journal of Fed Con, pp 67-83 "It was moved by Mr Hamilton, seconded by Mr Spaight, that the resolution be altered so as to read Resolved, that the rights of suffrage in the national legislature ought to be proportioned to the number of *free inhabitants*"

† Journal, 112

would have associated with it a revisionary council, to be formed of the national judiciary, having a qualified negative. Hamilton, on the other hand, would have imposed on a single executive an undivided responsibility, without a council of revision. He would have given the appointment of the judiciary to the executive, and would have charged it solely with judicial duties. The judiciary of Madison was to be appointed by the second branch, to be connected with the executive, to act politically as its controlling council, and also as the court of impeachments on the national officers.

Passing from the structure to the powers of the government—while Hamilton would have provided that the executive should take care that the laws were faithfully executed, Madison would have authorized the legislature to delegate to it, from time to time, such other powers, not legislative or judiciary in their nature, as it might choose;\* and would have given it a negative on the laws of the states.

As to the national legislature, he would have empowered it to “negative all laws” of the states “which to them shall appear improper.”† It has been seen that while he thought that perhaps this negative “might create a mutual dependence between the general and particular authorities,” and thus “that the necessity of operating by force on the collective will of a state might be precluded,” he said, “the right of coercion should be expressly declared.” This was by far the highest toned form of government submitted to the convention, and as it intermingled injuriously the different departments, and derived them all from the first legislative branch, would have resulted in an odious and intolerable tyranny, in which the executive and senate would have been the creatures and mere instruments

\* Journal, p. 89

† Ibid p 107

of the arbitrary will of the popular branch of the legislature.

In two most important particulars, a common sentiment is seen in the convention : the determination to lay a republican basis, in the pledge by an unanimous vote to "guarantee to each state a republican constitution, and its existing laws," and that the national judiciary should hold their offices during good behaviour.

To establish a stable and enduring government of competent powers, founded on the consent of the people, and to combine a vigorous execution of the laws with a due regard to liberty, by a judicious application of a system of checks as far as was practicable, consistently with the genius of a republic, were the great objects to be sought. Neither of the plans before the convention promised to effect these objects.

During its sitting, Hamilton had been engaged in framing a plan of government, in which, while he adhered strictly to the republican theory, he sought to blend with that form the advantages of a monarchy.

On the eighteenth of June, upon a resolution of Dickinson, "that the articles of confederation ought to be revised and amended, so as to render the government of the United States adequate to the exigencies, the preservation, and prosperity of the union," Hamilton addressed the committee. As no report approaching to accuracy has been given of this memorable speech, it is deemed expedient to publish the brief as it exists among his manuscripts.

#### INTRODUCTION.

- I Importance of the occasion.
- II. A solid *plan*, without regard to temporary *opinions*.
- III. If an ineffectual plan be again proposed, it will beget despair, and no government will grow out of consent.

#### IV. There seem to be but three lines of conduct.

- I. A league offensive, treaty of commerce, and apporportionment of the public debt.
- II. An amendment of the present confederation, by adding such powers as the public mind seems nearest being matured to grant.
- III. The forming a new government to pervade the whole, with decisive powers ; in short, with complete sovereignty.

Last seems to be the prevailing sentiment.

#### I. Its practicability to be examined.

Immense extent unfavourable to representation.

Vast expense.

Double sets of officers.

Difficulty of judging of local circumstances.

Distance has a physical effect on men's minds.

Difficulty of drawing proper characters from home.

Execution of laws, feeble at a distance from government—particularly in the collection of revenue.

Sentiment of obedience— }  
  } opinion.

#### I. Objections to the present confederation.

Intrusts the great interests of the nation to hands incapable of managing them.

All matters in which foreigners are concerned.

The care of the public peace—debts.

Power of treaty, without power of execution.

Common defence, without power to raise troops—have a fleet—raise money.

Power to contract debts, without the power to pay.

These great interests of the state must be well managed, or the public prosperity must be the victim.

Legislates upon communities.

Where the legislatures are to act, they will deliberate.

To ask money, not to collect it, and by an unjust measure.

No sanction !!

Amendment of confederation according to present ideas.

- 1 Difficult because not agreed upon any thing. Ex—  
*Impost.*

*Commerce*—different theories.

To ascertain the practicability of this, let us examine the principles of civil obedience.

#### SUPPORTS OF GOVERNMENT.

- I. Interest to support it.
  - II. Opinion of utility and necessity.
  - III. Habitual sense of obligation.
  - IV. Force.
  - V. Influence.
- I. Interest—particular and general interests.  
Esprit de corps.  
*Vox populi, Vox Dei.*
  - II. Opinion of utility and necessity.  
First will decrease with the growth of the *states*.  
*Necessity.*  
This does not apply to federal government.  
This may dissolve, and yet the order of the community continue.  
*Anarchy* not a necessary consequence.
  - III. HABITUAL sense of obligation.  
This results from administration of private justice.  
Demand of service or money odious.
  - IV. FORCE—of two kinds.  
COERCION of laws—COERCION of arms.  
First does *not exist*—and the last *useless*.  
Attempt to use it, a war between the states.

Foreign aid.

Delinquency not confined to one.

## V. INFLUENCE—

1. From municipal jurisdiction.

2. Appointment of officers.

3. Military jurisdiction

4. Fiscal jurisdiction.

All these now reside in (*the*) particular states.

Their governments are the chief sources of honour and emolument.

## AMBITION—AVARICE.

To effect any thing, passions must be turned towards the general government.

Present confederation cannot be amended, unless the most important powers be given to congress constituted as they are

This would be liable to all (*the*) objections against any form of general government, with the addition of the want of *checks*.

Perpetual effort in each member.

Influence of individuals in office to excite jealousy and clamour—state leaders

Experience corresponds

Grecian republics.

Demosthenes says—Athens seventy-three years—Lacedæmon twenty-seven—Thebans after battle of Leuctra.

Phocians—consecrated ground—Philip, &c.

Germanic empire

Charlemagne and his successors

Diet—recesses.

ELECTORS now seven, excluding others.

Swiss Cantons.

Two diets.

Opposite alliances.

Berne—Lucerne.



To strengthen the federal government, powers too great must be given to a single hand

League offensive and defensive, &c.

Particular governments might exert themselves, &c.

. But liable to usual vicissitudes.)

Internal peace affected.

Proximity of situation—natural enemies.

Partial confederacies from unequal extent.

Power inspires ambition.

Weakness begets jealousy.

Western territory.

Objn.—GENIUS of republics pacific.

Answer. Jealousy of commerce as well as jealousy of power, begets war.

Sparta—Athens—Thebes—Rome—Carthage—Venice—Hanseatic League.

England as many popular as royal wars.

Lewis the XIV.—*Austria*—Bourbons—William and Anne.

Wars depend upon trifling circumstances.

Where—Dutchess of Marlborough's glove.

Foreign conquest.

Dismemberment—Poland.

Foreign influence.

Distractions set afloat vicious humours.

Standing armies by dissensions.

Domestic factions—Montesquieu.

*Monarchy* in southern states.

☞ Federal rights—*Fisheries*.

*Wars*—destructive.

Loss of advantages.

Foreign nations would not respect our rights nor grant us reciprocity.

Would reduce us to a passive commerce.

*Fisheries*—navigation of the lakes—Mississippi—Fleet.

The general government must, in this case, not only have a strong soul, but *strong organs* by which that soul is to operate.

Here I shall give my sentiments of the best form of government—not as a thing attainable by us, but as a model which we ought to approach as near as possible.

British constitution best form.

Aristotle—Cicero—Montesquieu—Neckar.\*

Society naturally divides itself into two political divisions—the *few* and the *many*, who have distinct interests.

If government in the hands of the *few*, they will tyrannize over the many.

If (*in*) the hands of the many, they will tyrannize over the few. It ought to be in the hands of both; and they should be separated.

This separation must be permanent.

Representation alone will not do.

Demagogues will generally prevail.

And if separated, they will need a mutual check.

This check is a monarch.

Each principle ought to exist in full force, or it will not answer its end.

The democracy must be derived immediately from the people.

The aristocracy ought to be entirely separated; their power should be permanent, and they should have the *caritas liberorum*.

\* In Madison's very imperfect report of this speech, the authority of Neckar is alone adduced. The opinion entertained of him at that time, is seen in the eloquent commendation of Edmund Burke "I behold a fabric laid on the natural and solid foundation of trust and confidence among men, and rising by fair gradation, order above order, according to the just rules of symmetry and art—principle, method, regularity, economy, frugality, justice to individuals and care of the people, are the resources with which France makes war upon Great Britain —The minister who does these things is a great man "

They should be so circumstanced that they can have no interest in a change—as to have an effectual weight in the constitution.

Their duration should be the earnest of wisdom and stability.

'Tis essential there should be a permanent will in a community.

*Vox populi, vox Dei.*

Source of government—the unreasonableness of the people—separate interests—debtors and creditors, &c

There ought to be a principle in government capable of resisting the popular current

No periodical duration will come up to this.

This will always imply hopes and fears.

Creature and Creator.

Popular assemblies governed by a few individuals.

These individuals seeing their dissolution approach, will sacrifice.

The principle of representation will influence.

The most popular branch will acquire an influence over the other.

The other may check in ordinary cases, in which there is no strong public passion ; but it will not in cases where there is—the cases in which such a principle is most necessary.

☞ Suppose duration seven years, and rotation.

One-seventh will have only one year to serve.

One-seventh————two years.

One-seventh————three years.

One-seventh————four years.

A majority will look to a dissolution in four years by instalments.

The monarch must have proportional strength. He ought to be hereditary, and to have so much power, that it will not be his interest to risk much to acquire more.

The advantage of a monarch is this—he is above corruption—he must always intend, in respect to foreign nations, the true interest and glory of the people.

Republics liable to foreign corruption and intrigue—Holland—Athens.

Effect of the British government.

A vigorous execution of the laws—and a vigorous defence of the people, will result.

Better chance for a good administration

It is said a republican government does not admit a vigorous execution.

It is therefore bad ; for the goodness of a government consists in a vigorous execution.

The principle chiefly intended to be established is this—that there must be a permanent *will*.

Gentlemen say we need to be rescued from the democracy. But what the means proposed ?

A democratic assembly is to be checked by a democratic senate, and both these by a democratic chief magistrate.

The end will not be answered—the means will not be equal to the object.

It will, therefore, be feeble and inefficient.

#### RECAPITULATION

I. Impossible to secure the union by any modification of fœderal government.

II League, offensive and defensive, full of certain evils and greater dangers.

III General government, very difficult, if not impracticable, liable to various objections.

What is to be done ?

Answer. Balance inconveniences and dangers, and choose that which seems to have the fewest objections.

Expense admits of this answer. The expense of the state governments will be proportionably diminished.

Interference of officers not so great, because the objects of the general government and the particular ones will not be the same—Finance—Administration of private justice. Energy will not be wanting in essential points, because the administration of private justice will be carried home to men's doors by the particular governments.

And the revenues may be collected from imposts, excises, &c. If necessary to go further, the general government may make use of the particular governments

The attendance of members near the seat of government may be had in the lower branch.

And the upper branch may be so constructed as to induce the attendance of members from any part.

But this proves that the government must be so constituted as to offer strong motives.

In short, to interest all the *passions* of individuals.

And turn them into that channel.

After having stated his theoretical opinion of government, Hamilton declared "that the republican theory ought to be adhered to in this country, as long as there was any chance to its success—that the idea of a perfect equality of political rights among the citizens, exclusive of all permanent or hereditary distinctions, was of a nature to engage the good wishes of every good man, whatever might be his theoretic doubts; that it merited his best efforts to give success to it in practice; that hitherto, from an incompetent structure of the government, it had not had a fair trial, and that the endeavour ought then to be to secure to it a better chance of success by a government more capable of energy and order."\*

The speech of which this brief is given, occupied in the delivery between five and six hours, and was pronounced

\* Hamilton to Washington, post

by a competent judge,\* “the most able and impressive he had ever heard.”†

In the course of this speech, he read his plan of government, not the propositions which are found in the printed

\* Gouverneur Morris

† On a comparison of this brief with Madison’s report, it is not possible to give credence to his statement, “that Hamilton happened to call upon him when putting the last hand to it, who acknowledged its *fidelity*, without suggesting more than a *very few verbal alterations*, which were made”

Neither in the general outline, nor in the subdivisions, does it approach so near to accuracy as by possibility to have received the sanction of its author. A few of the discrepancies will be indicated

In Madison’s report of the preliminary remarks, to show that the states may have had in view a reference to the people at large, he ascribes this observation to Hamilton —“In the senate of New-York a proviso was moved, that no *act of the convention should be binding until it should be referred to the people*, and ratified, and the motion was *lost by a single voice only*, the reason assigned being, that it might probably be found an inconvenient shackle.” Had this proviso been moved, it must have been moved on the 28th of February, 1787, upon a resolution introduced by Hamilton in the assembly on the 26th, and proposed by Schuyler in the senate on that day No such proviso was moved

The proviso actually moved was that of Yates, an adherent of Clinton, who proposed to insert a declaration that “the alterations and provisions in the articles of confederation should be *not* repugnant to, or inconsistent with, the constitution of the state,” and it was lost by *a single vote*

Thus Hamilton is represented as sanctioning the accuracy of a speech, which contains a statement of an occurrence that did not take place, when he was a principal actor in, and was familiar with all the particulars of what had occurred at an interval of less than four months

As the ground of the opposition of his colleagues, and that on which they soon after withdrew from the convention, was, that it was exceeding its powers, it is obvious, if he had made such a statement, that it would have been controverted by them, and shown to have been erroneous by referring to the journals of New-York As no such statement was made by Hamilton, no contradiction of it is found in the notes of Yates, but his actual representation, and which corresponds with the fact, is there correctly given “Nor can we,” he observed, in reply to Lansing,‡ “suppose an annihilation of our powers by forming a national government, as many of the states have made

‡ Yates’ Debates, 130 New-York Journals, 1787, pp. 44, 45, February 28th.

journal, but "a full plan, so prepared that it might have gone into immediate effect if it had been adopted."

This plan consisted of ten articles, each article being divided into sections.

in their constitutions no provisions for any alterations, and thus much *I* can say for the *state* I have the honour to represent, that *when our credentials* were under consideration in the *senate*, some members were for inserting a restriction on the powers, to prevent an encroachment on the constitution. It was answered by others, and, therefore, the resolve carried on the credentials, that it might abridge some of the constitutional powers of the state, and possibly, in the formation of a new union, it would be found necessary. This appears reasonable, and therefore leaves us at liberty to form such a national government as we think best adapted to the good of the whole."

In the enumeration of the supports of government, Madison, 880, represents Hamilton as stating the second to be "*the love of power* Men love power. The same remarks are applicable to this principle—the states have constantly shown a disposition rather to regain the powers delegated by them, than to part with more, or to give effect to what they had parted with." The ambition of their demagogues is known to hate the control of the general government." Could he have embraced "*the love of power*," producing such consequences as are here enumerated, among "*the supports of government*?"

Yates states the second support thus, "Utility and necessity," which agrees with the brief, each confirming the accuracy of the other. And subsequently, when he represents Hamilton as saying "men always love power," he represents him as adding the observation, "and states will prefer particular concerns to the general welfare." In No 15 of the Federalist, after speaking of the perpetual effort "of the states, or inferior orbs, to fly off from the common centre," Hamilton observes "This tendency is not difficult to be accounted for—it *has its origin in the love of power*. Power controlled, or abridged, is almost always the rival and enemy of that power by which it is controlled or abridged." The third support stated by Hamilton, Madison says, was "an habitual attachment by the people." Yates concurs with the brief, in stating it to be "an habitual sense of obligation."\*

A more remarkable feature in this report is, that Madison, in order to leave the impression that Hamilton contemplated a monarchy, omits the declaration ascribed to him by Yates "*I despair that a republican form of government can remove the difficulties. Whatever may be my opinion, I would*"

\* Yates 191. If this should be called a verbal difference it will be recollected that Hamilton is said to have acknowledged "the fidelity of his report, without suggesting more than a very few verbal alterations." Would he not have suggested an alteration of this error?

The *first* of these declared that the "legislative power should be vested in an assembly and senate, subject to a negative, the executive power, with specified qualifications, in a president of the United States; and the supreme judicial authority, with certain exceptions, in a supreme court, to consist of not less than six, nor more than twelve, judges.

The assembly of representatives were (by the *second article*) to be chosen by the free male citizens and inhabitants of the several states in the union, all of whom, of the age of twenty-one years and upwards, were to be entitled to an equal vote. The first assembly was to consist of one hundred members, which were distributed among the states—the most populous state, Virginia, having sixteen, and the least populous, Delaware, having two representatives. The whole number was never to be less than one

*hold it, however, unwise to change that form of government*"\* Thus concurring with the declaration previously more accurately given, in his own language, "that the republican theory ought to be adhered to in this country as long as there was any chance of its success, that the idea of a perfect equality of all political rights among the citizens, exclusive of all permanent and hereditary distinctions, was of a nature to engage the good wishes of every good man, *whatever* might be his *theoretic doubts*; that it merited *his best efforts* to give *success* to it *in practice*; that hitherto, from an *incompetent structure* of the government, it had not had a fair trial, and that the *endeavour* ought *then* to be, to secure to it a *better chance* of success, by a government more capable of energy and order"

No true friend of his fame can regret that he entertained, and, entertaining, expressed these theoretic doubts, and it is the sublimest aspect of his character, that, in despite of these doubts, he devoted "the best efforts" of his life to give this experiment of "a perfect equality of political rights, success in practice"

\* Madison, 893, says in a note "The explanatory observations, which did not immediately follow were to have been furnished by Mr. H., who did not find leisure at the time to write them out, and they were not obtained" It is not probable Hamilton, approving his report of the speech, *as he alleges*, would have omitted such important explanatory observations. But if he did so omit them, it was incumbent upon Madison to have given the substance of them. On reading them, the motive to this omission becomes obvious



hundred, nor more than a given number, which was not fixed, to be apportioned among the states by a decennial census of the whole number of free persons, except Indians not taxed, and three-fifths of all other persons: the term of service was to be determined by the legislature, but was not to exceed three years, and to commence and end the same day. It was to choose its own officers, to judge and decide on the qualifications and elections of its members, and to have the exclusive power of impeachment; but the concurrence of two-thirds was necessary to impeach a senator.

Revenue bills and appropriations for the support of fleets and armies, and for the salaries of the officers of government, were to originate in this body, but might be altered or amended by the senate. The acceptance of office under the United States, vacated a seat in it. Thus, in the constituency of this branch of the government, (all the citizens and inhabitants of the union,) the principle of UNIVERSAL SUFFRAGE was recognised, and the democratic interests were fully represented. Its power over the purse, the sword, and over impeachments, gave it the means to resist usurpation, and rendered it an efficient counterpoise to the more durable members of the government, and the natural guardian of the rights and liberties of the people.

The *third article* related to the second branch of the legislature. The senate were also representatives of the people, but under the modifications that the senators were to be chosen by electors elected in districts of the states for that purpose, and only by persons who had an estate in land for life, or for an unexpired term of not less than fourteen years. The first senate was to be apportioned among the states as the convention should decide. For the purpose of future elections, the states which had more than one senator, were to be divided into convenient districts, to which senators were to be apportioned. A state

having one senator, to be a district. In case of death, resignation, or the removal of a senator from office, his place was to be supplied by a new election in the district from which he came; and upon each election there were not to be less than six nor more than twelve electors chosen in a district. The senate was never to consist of less than forty members, nor was any state to have a less number than that originally allotted to it; but the number might be increased in proportion to the whole number of representatives in the ratio of forty to one hundred; the increase to be apportioned among the states according to the respective numbers of their representatives. The senators were to hold during good behaviour, removable only by conviction on impeachment for some crime or misdemeanor, and might vote by proxy, but no senator present was to hold more than two proxies. To the senate, thus representing the numbers and property of the country, composing a not numerous body, and removed from immediate popular influences and passions, were confided the sole power of declaring war, and a control over the patronage of the government, by requiring its consent to executive appointments, which consent was also necessary to the ratification of treaties.

By the *fourth article*, the president was to be elected by electors chosen by electors chosen by the people in election districts. The first electors of each state were to be equal in number to the whole number of senators and representatives of such state in the national legislature. They were to be chosen by its citizens having an estate of inheritance, or for three lives in land, or a clear personal estate of the value of a thousand Spanish dollars of the then standard. These *first* electors of each state, meeting together, were to vote for a president by ballot, not being one of their own number. Then they were to nominate openly two persons as *second* electors; and out of the nominees having

the four highest numbers, were to choose by ballot, by plurality of votes, two who were to be the second electors of each state. These second electors, neither of whom could be voted for as president, were to meet on an appointed day, and in the presence of the chief-justice, or of a senior judge of the supreme court of the United States, were to open the lists of the persons voted for by the *first* electors. The person having a majority of the whole number, was to be president. If there was not a majority, then the *second* electors were to vote for one of the three persons having the highest number of the votes of the first electors ; and the person having a number of votes equal to a majority of the whole number of the second electors chosen, was to be the president. But if no such second choice should be made, then the person having the highest number of votes of the first electors, was to be president. By this complicated process, it was hoped to obtain a corrected expression of the public wishes in the choice of the chief magistrate, who was still the representative of the people.

The president was to take an oath, "faithfully to execute his office, and to the utmost of his judgment and power to protect the rights of the people, and preserve the constitution inviolate." He was to hold his office during good behaviour, removable only by conviction upon impeachment of some crime or misdemeanor. He was to have power to convene and to prorogue the legislature ; to have a negative on the acts and resolutions of the assembly and senate ; to take care that the laws be faithfully executed ; to be commander-in-chief of the army, navy, and militia ; and to have the direction of war when commenced, but not to take the actual command in the field without the consent of the senate and assembly ; to have the absolute appointment of the chief officers of the four great executive departments, and the nomination, and, with the advice of the

senate, the appointment of all other officers, except such as were differently provided for by the constitution, reserving to the legislatures the power of appointing by name, in their laws, persons to execute special trusts, and leaving to ministerial officers the appointment of their deputies. He might fill vacancies temporarily in the recess of the senate, and could pardon all offences except treason, which required the assent of the senate and assembly. He might be impeached by two-thirds of the legislature, two-thirds of each house concurring. If convicted, to be removed from office, and then tried and punished in the ordinary course of law. His impeachment was to operate as a suspension, until determined. His compensation was to be fixed, and not to be increased or diminished during his term of service. If he departed the United States, his office was abdicated.

The president of the senate was to be vice-president ; to exercise all the powers of the president in case of his death, resignation, impeachment, removal from office, or absence from the United States, until another was chosen.

The chief-justice, and other judges of the supreme court, were (*by the fifth article*) to hold during good behaviour, removable by impeachment and conviction. They were to have original jurisdiction in all causes in which the United States shall be a party : in all controversies between the United States and a particular state, or between two or more states, except questions of territory ; in all cases affecting foreign ministers, consuls, and agents · and an appellate jurisdiction, both as to law and fact, in all cases concerning the citizens of foreign nations , in all questions between the citizens of different states, and in all others in which the fundamental rights of the constitution were involved, subject to specified exceptions, and to the regulations of the legislature. The judges of all courts which might be constituted by the legislature, were also to hold

during good behaviour, removable by impeachment, and were to have competent salaries, to be paid at stated times, and not to be diminished during their continuance in office ; but the legislatures might abolish the courts themselves.

All crimes, except on impeachment, were to be tried by a jury of twelve men, in the state where committed , and all civil causes arising under the constitution, before triable by jury in the states, were also to be tried by jury, unless two-thirds of the national legislature should, in special cases, concur in a different provision.

When offices were of such duration as good behaviour, it was felt to be highly important to provide an efficacious and independent tribunal of impeachment ; and as not only the rights of the nation, but of the states, were to be guarded, to have reference in its constitution to the general and particular governments.

With this view, a court of impeachment was to be instituted, by which the president, vice-president, the senators, governors, and presidents of the states, the principal officers of the great executive departments, ambassadors and public ministers, judges of the supreme court, generals and admirals of the navy, were to be tried This court was to consist of the judges of the supreme court, and of the chief justice, or first or senior judge, of the supreme court of law of each state, of whom twelve were to compose a court, and a majority might convict. All other persons, when impeached, were to be tried by a court to consist of the judges of the supreme court and six senators, drawn by lot, a majority of whom might convict. Provisions were made for conducting these impeachments. Such was to have been the permanent structure of this government.

The danger of collisions between the states, arising out of conflicting claims of territory, had been presented to Hamilton, in the progress of the controversy between New-York and Vermont. Other claims were unsettled. He

proposed (*in a sixth article*) that a court should be formed, when territorial controversies should arise, of persons to be nominated by the controverting states, not their own citizens, double the number of the judges of the supreme court, one-half of whom, elected by the senate, should, with the judges of that court, decide the appeal.

In the resolutions prepared by Hamilton in seventeen hundred and eighty-three, it is seen that the leading defect of the confederation proposed to be corrected by him was, its "confining the federal government within too narrow limits; withholding from it that *efficacious authority* and influence in all matters of general concern, which are indispensable to the harmony and welfare of the whole, embarrassing general provisions by unnecessary details and inconvenient exceptions, incompatible with their nature, tending only to create jealousies and disputes respecting the proper bounds of the authority of the United States, and that of the particular states, and a mutual interference of the one with the other."

It was a settled maxim in his mind, "that a *government* ought to *contain within itself* every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard for the public good, and to the sense of the people."

Another maxim was, "that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to affect a purpose which is of itself incapable of limitation" Applying these enlarged and obvious principles, and having sought to guard, in the structure of the government, against an abuse of its powers, he declared, in the *seventh article* of this constitution, that "the legislature of the United States shall have power to pass all laws which they shall judge necessary to the common defence and general welfare of the union."

As a check upon this power, every act, bill, or resolu-

tion, was to have the assent of the president, which, if not given within ten days after such act being presented to him, was to become a law, of which the enacting style was to be, that it was "enacted by the people of the United States of America;" thus recognising in every exercise of legislative power the sovereignty and unity of the American people. This general power was followed by the declaration of a few general restrictions in the nature of a bill of rights, either suggested by the experience of this country, or having reference to the nature of the government.

The danger of legislative tyranny, and of retrospective laws, not only to the domestic peace, but to the foreign relations of the country, had been too immediately before him not to have commanded his attention. To provide an efficient check to such pernicious proceedings, he framed a clause declaring "that no bill of attainder or ex post facto law shall be passed," and adopting the language of the articles of the confederation, and thus adding guards to the republican system, he provided that no title of nobility should be granted by the United States, or either of them, and that no person holding any office or trust under the United States should, without permission of the *legislature*, accept any present, emolument, office, or title, from a foreign prince or state. "The prohibition of titles of nobility," he said, "may truly be denominated the corner-stone of republican government; for, so long as titles of nobility are excluded, there can never be serious danger that the government will be any other than that of the people."

To preclude the recurrence of such an attempt as he had recently defeated in the assembly of New-York, and carrying out the principle that is seen in his system of public instruction, he embodied in the constitution the proviso, so important to the interests of religion, to free-

dom of opinion, and to the peace of society, "nor shall any religious sect, or denomination, or religious test for any office or place, be ever established by law"

In forming a government founded upon a full recognition of the sovereignty of the people, it is seen that he had apportioned the representation to the number of free inhabitants; thus following this great principle to its appropriate result. But in apportioning the direct contributions of the states to the public treasury, there being no common measure of a nation's wealth, he took a basis which, in the peculiar condition of this country, promised a nearer approach to equality than any other. "Taxes on lands, houses, and other real estate, and capitation taxes, were to be proportioned in each state to the whole number of free persons, except Indians not taxed, and three-fifths of all other persons."

As the command over the purse of the nation was intended by him to be a real check upon the action of the government, and with this view the originating revenue bills had been given to the popular branch, he provided "that the two houses might by joint ballot appoint a treasurer of the United States," thus securing the custody of the revenues of the nation to the department it had intrusted with raising and appropriating them.

A government performing its great office of providing for the common defence and safety, and for the general welfare, by its own comprehensive organs, acting upon individuals, the only proper objects of government, would perhaps have possessed a sufficiently central power to have maintained its due ascendancy. But as the state governments were to continue in order to prevent collision, it was declared that the laws of the United States, and treaties made under the articles of the confederation, and to be made under the constitution, were to be the supreme law of the land, and to be so construed by the several courts of



the several states. The legislature was to convene once in each year, which, unless otherwise provided for by law, should be on the first Monday in December; to receive a reasonable compensation fixed by law, no succeeding assembly to increase its own compensation.

The preceding injunction, that the laws and treaties of the United States "shall be the supreme law of the land," obligatory on all the courts, guarded against conflicts with the legislation of the states, and in theory secured the necessary supremacy to the judiciary power of the general government; but that power might be rendered nugatory by a defective execution of those laws. The position of New York at that moment indicated the danger to be apprehended from the executive trust of the states being independent of the government of the union.

To provide against both these evils, he declared (*in the eighth article*) that the governor or president of each state shall be appointed by the authority of the United States, shall have a negative on all laws about to be passed in the state of which he shall be governor or president, subject to such regulations as the legislature of the United States shall prescribe, but in all other respects, except as to the appointment of the officers of the militia, to have the same powers the constitution of the states then did or should allow. Each governor or president of a state was to hold his office until a successor was actually appointed, which could not be during the recess of the senate, "unless he died, resigned, or was removed on impeachment."

The officers of the militia might be appointed under the authority of the United States, unless its legislature authorized their appointment by the governors or presidents of the states; and, to avoid any obstruction from that source, the governors and presidents of the states at the time of the ratification of the constitution, were to continue in office in the same manner, and with the same pow-

ers, as if they had been appointed by the president and senate of the United States.

"If it be possible," Hamilton observed, "to construct a federal government capable of regulating the common concerns, and preserving the general tranquillity, it must carry its agency to the persons of its citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the union, like that of each state, must be able to address itself immediately to the hopes and fears of individuals, and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the governments of particular states."

Under this important provision as to the appointments of these governors and presidents, the administration of the general government, pervading the states, would have executed itself, while their legislatures would have retained the control of that part of internal police which relates "to the rights of property and life among individuals, the administration of justice, the supervision of agriculture, and of such things as are proper for local legislation." The advantages would thus have been attained of the reproductiveness of the civil power, and of its diffusive force throughout the whole extent of the republic, and the state legislatures would have acted as sentinels to warn against the first approach of usurpation.

The *ninth* article provided that the president must then be "a citizen of one of the states, or hereafter be born a citizen of the United States;" that senators and represen-

tatives must be citizens and inhabitants of the state in which they were chosen.

Prompted by the recent proceedings in New-York, he also provided that no person eligible as president, or to the legislature, shall be disqualified but by the conviction of some offence for which the law shall have *previously* ordained the punishment of disqualification; but that the legislature might provide by law that persons holding offices under the United States, or either of them, shall not be eligible to the assembly, and “shall be, during their continuance in office, suspended from sitting in the senate.” The citizens of each state were to be entitled to all the immunities of citizens of other states, and full faith and credit was to be given to the public acts, records, and judicial proceedings of each; fugitives from justice were to be delivered up;—provisions taken from the articles of confederation. No new state was to be formed without the concurrent consent of the United States, and of the states concerned; but new states might be admitted by the general legislature into the union. The United States were declared bound to guaranty a republican form of government to each state, and to protect it as well against domestic violence as against foreign invasion; a provision drawn from the propositions of Randolph, but essentially enlarged—supplying, as Hamilton observed, “a capital imperfection” in the articles of the confederation.

All treaties, contracts, and engagements under those articles, were to have equal validity under the constitution; no state could enter into a treaty or alliance with another, or with a foreign power, without the consent of the United States. The members of the legislature of the United States and of each state, and all officers, executive and judicial, were to take an oath or affirmation to support the constitution of the United States.

Though a change of government would not have dis-

solved existing treaties not inconsistent with its principles, yet Hamilton's knowledge of the distinctions of international law would teach him the importance of a full and explicit declaration on this important subject, as a guard of the interests and of the faith of the nation. In the absolute prohibition of treaties by the states with foreign powers, the restrictive clause of the confederation was extended, and the requisition of an oath to support the constitution was a useful additional bond. Amendments to it were to be proposed by two-thirds of both houses, to be ratified by the legislatures or conventions in two-thirds of the states.

Finally, to secure the immediate operation of the new system, and to give it the solemn sanction of the people, it was provided (*in the tenth article*) that the constitution should be submitted to conventions of the people of each state, by their deputies, chosen under the direction of their respective legislatures, that each convention ratifying the constitution should appoint the first representatives and senators from such state, the representatives so appointed to continue in office only one year.

When the constitution shall have been duly ratified, congress were to give notice of a day and place of meeting of the senators and representatives from the several states; a majority of whom, when assembled, it was provided, shall, by plurality of voices in joint ballot, elect a president of the United States, "and the constitution, thus organized, shall be carried into effect."

From this abstract it will be seen, though Hamilton would have made use of the state governments for certain purposes, thus completely refuting the allegation that he contemplated their abrogation, yet it was his desire to have established a simple government pervading the whole union and uniting its inhabitants as one people. As it was necessary that "each department should have a will of its

own," this government was so constituted that the members of each had no agency in the appointment of the others, and, with the exception of the judiciary, each was "drawn from the same fountain of authority, the people, and through channels having no communication whatever with one another." "In the constitution of the judiciary in particular," Hamilton remarked, "it might be inexpedient to insist rigorously on the principle; because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications, and because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them."

"It is equally evident," he observed, "that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices." hence is seen the provision that the compensation of the executive and the judiciary should be fixed by law; that of the judges not to be diminished during their term, and to guard against executive influence, that of the president to be neither increased nor diminished "In framing a government which is to be administered by men over men, the great difficulty," he said, "lies in this—you must first enable the government to control the governed, and, in the next place, oblige it to control itself. A dependence on the people is, no doubt, a primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." Of these, the chief was "in the distribution of the supreme powers of the state" "But it is not possible," he observed, "to give to each department an equal power of self-defence. In republican governments, the legislative authority necessarily predominates. The remedy for this inconvenience is, to divide the legislature into different branches; and to ren-

der them by different modes of election, and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit." With these views in the structure of this government, while by the frequent choice of the popular branch elected by universal suffrage, the democratic influence was to be constantly renewed and invigorated, in the duration of the senate and executive chosen by constituents with property qualifications, he hoped to secure efficient and enduring checks on the impetuosity and instability of the many. The power of the people was to be kept up by a constitutional augmentation of the number of these representatives; and thus the barrier against executive usurpation, if attempted, was steadily strengthened, and "as the weakness of the executive," he remarked, "may require that it should be fortified," he gave him an "absolute negative on the legislature, as the natural defence with which the executive magistrate should be armed."

Having provided these precautions, by the deposit of the national trusts with representatives of different interests freely chosen by the people, and holding by a responsible and defeasible tenure, governed by the great maxims previously stated, he empowered the legislature "to pass all laws necessary to the common defence and safety, and to the general welfare of the union."

It would require an elaborate commentary to indicate the character and adaptation of the more minute parts of this frame of government to their several purposes, nor will its qualities be more fully discussed. If intrinsic defects are seen, they are defects resulting from the inherent difficulty of imparting the necessary and safe vigour and stability to republican institutions, which exclude the principle of hereditary power.

But in this approach "to the confines of another govern-

ment" without a departure from the republican theory, is seen a remarkable manifestation, both of the fertility of his genius, and of the severe and provident control of his reason and experience. It would not be easy to pronounce on the probable working of such a system,\* but the subsequent history of the country gives abundant evidence, that a departure from some of its principles has neither added security to liberty nor promoted the general welfare.

\* Plan in the Appendix.

## CHAPTER XXIV.

[1787]

HAVING thus presented to the convention the model of an efficient government, founded on the power of the people, Hamilton now exerted all his influence to raise their minds to a point which it is questionable whether they would have otherwise reached. The result of these efforts may be seen in the influence which the opinions of Washington, however cautiously expressed, would exert over the members of that body; and in the direction now given to Madison's mind: both of whom, Hamilton subsequently stated, adopted his views, regarding his plan as not exceeding in stability and strength what the exigencies of the country required. "They were," in his own words, "completely up to the scheme."

On the day after his speech was delivered, Madison addressed the committee.\* He stated that the confederation might be dissolved by the infraction of any article of it, recapitulating the instances in which it had been violated. The Jersey plan did not provide for the ratification of the states. Its judiciary was to have only an appellate jurisdiction, without providing for a second trial. We must radically depart from the *federal* plan, or share the fate of all confederacies. The Jersey plan gave no checks on the excesses of the states. It did not secure the internal tranquillity, nor prevent foreign influence.

\* The residue of the debates is taken, with very few exceptions, from Yates, the general accuracy of which is confirmed by other authorities.



How is military coercion to enforce government? Unless we agree upon a plan, what will be the situation of the smaller states? If they form partial confederacies, must they not make larger concessions to the greater states? The large states cannot assent to an equal representation. If the states were equalized, state distinctions would still exist.

In reply to an observation of Wilson, Hamilton remarked that he did not intend yesterday a total extinguishment of state governments, but that a national government ought to be able to support itself without the aid or interference of the state governments, and therefore should have full sovereignty. Even with corporate rights the states will be dangerous to the national government, and ought to be new modified, or reduced to a smaller scale. In the course of a series of forcible and eloquent remarks, King observed that none of the states were at that time sovereign or independent; many of their essential rights were vested in congress. By the confederation, it possesses the rights of the United States. *This is the union of the men of these states.* None individually or collectively, except in congress, have the rights of peace, or war, or treaty. The magistracy in congress possesses the sovereignty. As to certain points, we are now an united people; consolidation is already established; the states are confederates, the constituents of a common sovereign, constituted with powers partly federal and partly national. The alterations which had been made, show others can be made, except the subversion of the states, which are expressly guarantied. The articles of the confederation providing in themselves for an alteration, might be so altered as to give them a national character. "The declaration of independence," Wilson said, "preceded the state constitutions. What does this declare? In the name of the people of these states, we are declared to be free and independent. The powers of

war, peace, alliances, and trade, are declared to be vested in congress."

"I assent to this remark," Hamilton observed; "establish a weak government, and you must, at times, overleap its bounds. Rome was obliged to create dictators. Cannot propositions be made to the people because we before confederated on other principles? The people can grant the powers if they will! The great objects of industry can only be protected by a general government." On motion of King, it was resolved by seven states that the Jersey plan was inadmissible.

Having thus obtained a decided expression of the opinion of the convention against the continuance of a mere league with enlarged powers, they proceeded, on the twentieth of June, again to consider the Virginia resolutions. After an amendment of the first, so as to declare that "the government of the United States ought to consist of a supreme legislative, judiciary, and executive," Lansing moved a declaration "that the powers of legislation be vested in the United States in congress"\* He stated that if the Jersey plan was not adopted, it would produce the mischiefs they were convened to obviate. That the "principles of that system" were "an equality of representation, and dependence of the members of congress on the states. That as long as state distinctions exist, state prejudices would operate, whether the election be by the states or the people." If there was no interest to oppress, there was no need of an apportionment. What would be the effect of the other plan? Virginia would have sixteen, Delaware one representative. Will the general government have leisure to examine the state laws? Will it have the necessary information? Will the states agree to surrender? Let us meet public opinion, and hope the progress of senti-

ment will make future arrangements. "He would like the system" of his colleague (Hamilton) "if it could be established,"\* but it was "a system without example"

Mason wished to preserve the state governments, and to draw lines of demarcation, trusting to posterity to amend. He was in favour of a republican system with a legislature of two branches.

Martin urged the grant of new powers, and such a modification of the existing system as would not endanger the state governments. "The grant," he said, "is a state grant, and the union must be so organized that the states are interested in supporting it." After further debate, the proposition to vest the powers of legislation in congress was rejected, and the national plan was taken up. On the question of constituting two branches of the legislature, Johnson observed "that the Jersey plan would preserve the state governments, and thus was a departure from that of Virginia, which, though it concentrates in a distinct national government, is not wholly independent of those of the states.

"A gentleman from New-York, with boldness and decision, proposed a system totally different from both, and, though he has been praised by every body, has been supported by none. He could have wished that the supporters of the Jersey system could have been satisfied with that of Virginia, and the individuality of the states be supported. It is agreed on all hands that a portion of government is to be left to the states; how can this be done? By joining the states in their legislative capacities, with the right of apportioning the second branch of the national legislature to represent the states individually." Wilson would try to designate the powers of each. Madison apprehended the greatest danger from the encroachments of

\* In the original notes, "He would like my system if it could be established—system without example"

the states ; an apprehension justified by experience. The negative on the state laws afforded one security to the national government. To draw the line between the two was a difficult task. He believed it could not be done, and was inclined to a general government. A national legislature of two branches was approved.

On the question of the election of the first branch by the people, great diversity of opinion existed. Hamilton again declared himself in favour of it. He observed,\* "It is essential to the democratic rights of the community, that this branch be directly elected by the people. Let us look to probable events. There may arrive a period when the state legislatures may cease. Such an event ought not to embarrass the national government."

King concurred in support of this principle. He believed that the magistrates of the states will ever pursue schemes of their own ; and this state policy will, if the states elect the first branch, pervade the national government, to which those of the states will ever be hostile. After an opposite view by Pinckney and Rutledge, the resolve, giving the election to the people, was carried, and the duration of this branch considered. It was proposed to limit it to two years. Sherman was for one. Hamilton said,† "There is a medium ; I confess three years is not too long a term : a representative ought to have freedom of deliberation, and ought to exercise an opinion of his own. I am convinced the public mind will adopt a solid plan, although the government of New-York is higher toned than that of any other state, yet the electors are listless and indifferent. The public are not now ready to receive the best plan of government, but the progress of circumstances will give it a different complexion." A biennial term was then adopted.

\* Yates, page 149, *omitted* in Madison's reports, 926

† Yates, 151. See Madison, 921

On the inquiry as to the compensation of the members, Hamilton remarked that "the states ought not to pay the members, nor ought the amount to be fixed by the constitution. He who pays is master. If each state pays its own members, the burden being according to their respective distances from the seat of government, would be disproportionate. It has been asserted that the interests of the general and state legislatures are precisely the same. This cannot be correct. The views of the governed are often materially different from those who govern. *The science of policy is the knowledge of human nature.* A state government will ever be the rival power of the general government. It is, therefore, highly improper that the state legislatures should be the paymasters of the national government. All political bodies love power, and it will often be improperly attained"\* It was resolved that the members should be paid from the public treasury.

To secure the representatives from influence, it had been proposed to render them ineligible to any office established by a particular state, or by the United States, during their term of service. It was now proposed to expunge the clause which extended the restriction to one year after the expiration of that term. King considered it impossible to carry the system of exclusion so far, "and we refine," he said, "too much by going in this instance to Utopian lengths. It is a mere cobweb."—"If there was no exclusive clause, Madison thought there might be danger of creating offices, or augmenting the stipends of those already created, in order to gratify members if they were not excluded. Such an instance had fallen within his own observation. He was of the opinion that no office ought to be open to a member, which might be created or the emolument aug-

\* Yates, 152—

mented while he was in the legislature." Hamilton closed the debate\* with these remarks:—

"In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Mankind in general are vicious—their passions may be operated upon: we have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it is necessary to support a good government. We have taken up many ideas upon trust, and at last, pleased with our own opinions, establish them as undoubted truths. Hume's† opinion of the British constitution confirms the remark, that there is always a body of firm patriots, who often shake a corrupt administration. Take mankind as they are, and what are they governed by? Their passions.

"There may be in every government a few choice spirits, who may act from more worthy motives. One great error is, that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it ever will be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good, for these ever induce us to action.

"Perhaps a few men in a state may, from patriotic motives, or to display their talents, or to reap the public applause, step forward. But if we adopt this clause, we destroy the motive. I am, therefore, against all exclusions and refinements, except this exclusion—that when a member takes his seat, he should vacate every other office. It

\* Yates, 156

† "It was known that one of the ablest politicians (Mr Hume) had pronounced all that influence on the side of the crown which went under the name of *corruption*, an essential part of the weight which maintained the equilibrium of the constitution."

Madison, 938, gives this version of Hamilton's remarks thus italicised.

is difficult to put any exclusive regulation into effect; we must in some degree submit to the inconvenience."

The second branch, or senate, was next considered. Hamilton, in accordance with his plan, wished that it should be chosen by the *people*, through the medium of electors; but it was decided that the choice should be made by the state legislatures. Its term of service was much debated. Madison said, "We are now to determine whether the republican form shall be the basis of our government." He admitted that great powers were to be given, and that they might be abused. Members may also lose their attachment to their states. Yet the first branch would control them in many of their abuses. "But we are now forming a body on whose wisdom we mean to rely, and their permanency in office secures a proper field in which they may exert their firmness and knowledge. Democratic communities may be unsteady, and be led to action by the impulse of the moment. They may be sensible of their own weakness, and desire the counsels and checks of friends to guard them against the turbulence and weakness of unruly passions. Such are the various pursuits of this life, that, in all civilized countries, the interest of a community will be divided; there will be debtors and creditors, and an unequal possession of property; and hence arise different views and different objects in government. This, indeed, is the ground-work of aristocracy, and we find it blended in every government, both ancient and modern. Even where titles have survived property, we discover the noble beggar haughty and assuming. The man who is possessed of wealth, who lolls on his sofa or rolls in his carriage, cannot judge of the wants or feelings of the day-labourer.

"The government we mean to erect is intended to last for ages. The landed interest at present is prevalent, will it not in time, by the operation of *trade* and *manufactures*, be *overbalanced* in future elections? and, unless wisely pro-

vided against, what will become of your government? In England, at this day, if elections were open to all classes of people, the property of the landed proprietors would be insecure; an agrarian law would soon take place. If these observations be just, our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government to support these valuable interests, and to balance and check the other. *They ought to be so constituted as to protect the minority of the opulent against the majority.* The senate, therefore, ought to be this body; and, to answer these purposes, ought to have *permanency and stability*. Various have been the propositions; but my opinion is, *the longer they continue in office, the better will their view be answered* ”\*

Sherman replied, “that a bad government was the worse for being long, that frequent elections give security and permanency. That in Connecticut an annual government had existed one hundred and thirty-two years, and as long as a man behaves well he is never turned out of office. Four years to the senate is quite sufficient with the rotation proposed.”

Hamilton observed, “This question has already been considered in several points of view. We are now forming a republican government. *Real liberty is neither found in despotism, nor in the extremes of democracy, but in moderate governments*. Those who mean to form a solid republican government, ought to proceed to the confines of another government.† As long as offices are open to all

\* Yates, 169

† It will be remarked that a similar opinion was expressed by Jefferson a few months before. Writing from Paris, February 28, 1787, to La Fayette, then about to take part in the deliberations of France, he observed, “I wish you success in your meeting, (the *assemblée des notables*.) I should form better hopes of it, if it were divided into two houses instead of seven, keep-



men, and no constitutional rank is established, it is pure republicanism. But if we *incline too much to democracy, we shall soon shoot into a monarchy.* The difference of property is already great among us. Commerce and industry will still increase the disparity. Your government must meet this state of things, or combinations will in process of time undermine your system. What was the tribunitian power of Rome? It was instituted by the plebeians as a guard against the patricians. But was this a sufficient check? No! The only distinction which remained at Rome was, at last, between the rich and poor. The gentleman from Connecticut forgets that the democratic body is already secure in a representation. As to Connecticut, what were the little objects of their government before the revolution? Colonial concerns merely. They ought now to act on a more extended scale; and dare they do this? Dare they collect the taxes and requisitions of congress? Such a government may do well if they do not tax, and this is precisely their situation."

Wilson remarked, "The motion is now for nine years, and a triennial rotation. Every nation attends to its foreign intercourse to support its commerce, to prevent foreign contempt, and to make war and peace. Our senate will be possessed of these powers, and therefore ought to be dignified and permanent. What is the reason that Great Britain does not enter into a commercial treaty with us? Because congress has not the powers to enforce its observance. But give them those powers, and give them the stability proposed by the motion, and they will have more

*ing the good model of your neighbouring country before your eyes, you may get on step by step towards a good constitution. Though that model is not perfect, yet, as it would unite more suffrages than any new one which could be proposed, it is better to make that the object. If every advance is to be purchased by filling the royal coffers with gold, it will be gold well employed"*

permanency than a monarchical government. The great objection of many is, that this duration would give birth to views inconsistent with the interests of the union. This can have no weight if the triennial rotation is adopted, and this plan may possibly tend to conciliate the minds of the members of the convention on this subject, which have varied more than on any other question." Delaware, Pennsylvania, and Virginia, were in favour of nine years, but it was agreed that it should be six, with a biennial rotation.

The discussion of the powers of the legislature was deferred in order to consider the proportionate suffrage of the states in its choice. Martin urged with great vehemence an equal representation of the states as their right, and as most promotive of the general welfare; and after a motion of Lansing, that the representation in the first branch should be according to the rule of the confederation, Madison supported earnestly a proportionate representation of the states. "Some gentlemen," he said,\* "are afraid that the plan is not sufficiently national, while others apprehend that it is too much so. If this point of representation was once well fixed, we would come nearer to one another in sentiment. The necessity would then be discovered of circumscribing more effectually the state governments, and enlarging the bounds of the general government. Some contend that the states are sovereign, when in fact they are only political societies. There is a gradation of power in all societies, from the lowest corporation to the highest sovereign. The states never possessed the essential rights of sovereignty. These were always vested in congress. Their voting as states in congress is no evidence of sovereignty. The state of Maryland voted by counties. Did this make the counties sovereign? The

\* Yates, p 184-5

states at present are only great corporations, having the power of making by-laws, and these are effectual only if they are not contradictory to the general confederation. The states ought to be placed under the control of the general government, at least as much so as they formerly were under the king and British parliament. The arguments, I observe, have taken a different turn, and I hope may tend to convince all of the necessity of a strong energetic government; which would equally tend to give energy to, and protect the state governments." He deprecated the jealousy of the states, and observed, "If the power is not immediately derived from the people, in proportion to their numbers, we make a paper confederacy, but that will be all."

"I would have no objection," Judge Read observed, "if the government was more national, but the proposed plan is so great a mixture of both, that it is best to drop it altogether. A state government is incompatible with a general government. If it was more national, I would be for a representation proportionate to population. The plan of the gentleman from New-York (Hamilton) is certainly the best. But the great evil is the unjust appropriation of the public lands. If there was but one national government, we would be all equally interested."

Hamilton, in the progress of this discussion, remarked—"The course of my experience in human affairs might, perhaps, restrain me from saying much on this subject. I shall, however, give utterance to some of the observations I have made during the course of this debate. The gentleman from Maryland has been at great pains to establish positions which are not denied. Many of them, as drawn from the best writers on government, are become self-evident principles. But I doubt the propriety of his application of those principles in the present discussion. He deduces from them the necessity that states entering into a confederacy must retain the equality of votes. This po-

sition cannot be correct. Facts contradict it. The parliament of Great Britain asserted a supremacy over the whole empire, and the celebrated Judge Blackstone labours for the legality of it, although many parts were not represented. This parliamentary power we opposed as contrary to our colonial rights. With that exception, throughout that whole empire it is submitted to

“May not the smaller and greater states so modify their respective rights as to establish the general interest of the whole without adhering to the right of equality? Strict representation is not observed in any of the state governments. The senate of New-York are chosen by persons of certain qualifications to the exclusion of others

“The question after all is—Is it our interest, in modifying this general government, to sacrifice individual rights to the preservation of the rights of an *artificial* being, called states? There can be no truer principle than this—*That every individual of the community at large has an equal right to the protection of government.* If, therefore, three states contain a majority of the inhabitants of America, ought they to be governed by a minority? Would the inhabitants of the great states ever submit to this? If the smaller states maintain this principle through a love of power, will not the larger, from the same motives, be equally tenacious to preserve their power? They are to surrender their rights—for what? For the preservation of an artificial being. We propose a free government. Can it be so, if partial distinctions are maintained?

“I agree with the gentleman from Delaware, that if the state governments are to act in the general government, it affords the strongest reason for exclusion. In the state of New-York five counties form a majority of representatives, and yet the government is in no danger, because the laws have a general operation. The small states exaggerate their danger, and on this ground contend for an undue

proportion of power. But their danger is increased if the larger states will not submit to it. Where will they form new alliances for their support? Will they do this with foreign powers? Foreigners are jealous of our increasing greatness, and would rejoice in our distractions. Those who have had opportunities of conversing with foreigners respecting sovereigns in Europe, have discovered in them an anxiety for the preservation of our democratic governments, probably for no other reason but to keep us weak. Unless your government is respectable, foreigners will invade your rights—and to maintain tranquillity, it must be respectable. Even to observe neutrality you must have a strong government.

“I confess our present situation is critical. We have just finished a war which has established our independence, and loaded us with a heavy debt. We have still every motive to unite for our common defence. Our people are disposed to have a good government, but this disposition may not always prevail. It is difficult to amend confederations: it has been attempted in vain, and it is perhaps a miracle that we are now met. We must therefore improve the opportunity, and render the present system as perfect as possible. Their good sense, and, above all, the necessity of their affairs, will induce the people to adopt it.”

Lansing's motion was negatived by six to four states, Maryland being divided, and the original resolution passed.

Imperfect as these reports are, they are sufficient to show the spirit in which Hamilton met the objections to an energetic system, labouring to vindicate the cause of an efficient moderate government.

Some private business calling him at this time to New-York, he was absent from the convention a few days.

From the influence of Washington he hoped much; and soon after his departure he communicated to him his impression of what he believed to be the opinion of the peo

ple, and his convictions as to the policy to be pursued. His letter gives the important and interesting fact, that, previous to this moment, no disclosure of his sentiments had been sought by Hamilton from Washington. Such was the delicacy observed towards a personage to whom the country looked as its probable head, if a general government should be established.

#### HAMILTON TO WASHINGTON

DEAR SIR,

In my passage through the Jerseys, and since my arrival here, I have taken particular pains to discover the public sentiment, and I am more and more convinced that this is the critical opportunity for establishing the prosperity of this country on a solid foundation. I have conversed with men of information, not only of this city, but from different parts of the state; and they agree that there has been an astonishing revolution for the better in the minds of the people.

The prevailing apprehension among thinking men is, that the convention, from the fear of shocking the popular opinion, will not go far enough. They seem to be convinced, that a strong, well-mounted government will better suit the popular palate, than one of a different complexion. Men in office are, indeed, taking all possible pains to give an unfavourable impression of the convention; but the current seems to be moving strongly the other way.

A plain but sensible man, in a conversation I had with him yesterday, expressed himself nearly in this manner:—The people begin to be convinced that their “excellent form of government,” as they have been used to call it, will not answer their purpose, and that they must substitute something not very remote from that which they have lately quitted.

These appearances, though they will not warrant a conclusion that the people are yet ripe for such a plan as I advocate, yet serve to prove that there is no reason to despair of their adopting one equally energetic, if the convention should think proper to propose it. They serve to prove that we ought not to allow too much weight to objections, drawn from the supposed repugnancy of the people to an efficient constitution. I confess I am more and more inclined to believe that former habits of thinking are regaining their influence with more rapidity than is generally imagined.

*Not having compared ideas with you, sir, I cannot judge how far our sentiments agree;* but, as I persuade myself, the genuineness of my representations will receive credit with you. My anxiety for the event of the deliberations of the convention, induces me to make this communication of what appears to be the tendency of the public mind.

I own to you, sir, that I am seriously and deeply distressed at the aspect of the counsels which prevailed when I left Philadelphia. I fear that we shall let slip the golden opportunity of rescuing the American empire from disunion, anarchy, and misery.

No motley or feeble measure can answer the end, or will finally receive the public support. Decision is true wisdom, and will be not less reputable to the convention, than salutary to the community.

I shall of necessity remain here ten or twelve days. If I have reason to believe that my attendance at Philadelphia will not be mere waste of time, I shall, after that period, rejoin the convention.

New-York, July 3d, 1787.

The apprehensions entertained by Hamilton were confirmed by the temper evinced during the renewed discussion of a proposition of Ellsworth that each state should

have an equal vote in the second branch of the legislature. At its termination the increased strength of the states right party was shown by an equal division of the votes—five states being in favour of the proposition and five in the negative—Maryland divided.

The pertinacity with which the claims to an equal participation in the second branch were pressed, following the warmth previously exhibited on the question of electing the first branch by the people, threatened an utter prostration of all hope of concurring in a plan of government

Under these circumstances, General Cotesworth Pinckney proposed to appoint a committee to adjust the embarrassing controversy.

Martin objected to the measure as an attempt to compromise, and, feeling the strength of his party, declared, "You must give each state an equal suffrage, or our business is at an end." Sherman replied, that "we had reached a point from which we cannot move in either direction," and urged the committee.

Gouverneur Morris followed, insisting on the necessity of an aristocracy "of men of great and established property" in the second branch, to be checked by the democratic branch, and thus give stability to the government. "A senate for seven years, excluded from office, would be," he observed, "one of the baubles of the general government. A government by compact is no government. While I avow myself," he said, "the advocate of a strong government, I admit that the influence of the rich must be guarded. and a pure democracy is equally oppressive to the lower orders of the community." He threw out these remarks for the consideration of the committee to be appointed. Wilson did not approve of this expedient. If adopted, he was for a smaller committee. Madison objected to it as only a source of delay. If appointed "from each state, we shall have in it the whole force of state pre-



judices." "The great difficulty is to conquer former opinions. The motion can as well be decided here as in committee." Gerry urged accommodation as absolutely necessary, hoping that the defects might be amended by a future convention. The motion was carried by nine states, Jersey and Delaware dissenting, and a committee of a member from each state was chosen by ballot, composed chiefly of the advocates of the Jersey plan.

On the fifth of July a compromise was reported. It proposed to give to each state one representative for every forty thousand inhabitants, computing three-fifths of the slaves as one white, and to a state containing a less number, one representative, to compose the first branch; vesting in that branch the exclusive origin and control of money bills;—that in the second branch, each state should have one vote.

The advocates of a strong government opposed the proposition. Wilson insisted upon a division of the question. Madison declared that the originating money bills was no concession on the part of the smaller states, as seven states combining in the second branch, could control the first, it being small in number and well connected, will ever prevail. No provision is made as to the regulation of trade, imposts, treaties. We are driven to an unhappy dilemma. Two-thirds of the inhabitants of the union are to please the remaining third by sacrificing their essential rights.

In behalf of this compromise it was asserted, that the power over money bills was an equivalent for the equal representation in the senate. That it properly belonged to the democratic branch. The senate being farther removed from the people, would be less attentive to economy. It was analogous to the parliamentary usage of England.\*

The members most strenuous for retaining power in the

\* Gerry's State of Facts

states wished to postpone the consideration of the first proposition in order to enter upon the second, which was not acceded to ; and the question, whether numbers or relative contribution should determine the proportion of suffrage, was referred to a special committee. It was then proposed to consider the constitution of the second branch. This was postponed by the vote of six states—Massachusetts and New-York divided.

Having given a vote in favour of conferring on the first branch the originating money bills, and thus fulfilling that part of the proposed compromise, it was moved that in the second branch the states should have an equal vote, which was approved. On the ninth of July the special committee reported an apportionment of the members of the first branch among the states, and that the legislature be authorized to augment the number from time to time, and in case a state be divided, or two or more united, or a new state be created within the limits of the United States, it be empowered to regulate the number of representatives upon the principles of their wealth and number of inhabitants ; the provisional clause was approved, the equal vote in the second branch temporarily sanctioned, and the ratio was established on a conjectural basis. An objection being taken to the small number of representatives, this subject was referred to the grand committee from each state.\* The following day King reported a new scale of representation, increased from fifty-six to sixty-five members.

At this important moment, when a large concession had been made to the advocates of an equal power in the states, and a basis had been formed upon which a compound

\* Madison states a proposition, proceeding from himself, as a proper ground of compromise, that in the first branch the states should be represented according to the number of free inhabitants, and in the second, which had for one of its primary objects the guardianship of property, according to the whole number, including slaves—in effect, a southern predominance

government, in part national, and in part federal, was to be established, Yates and Lansing retired finally from the convention \* On the last day on which they appeared, Washington replied to Hamilton.

## WASHINGTON TO HAMILTON

Philadelphia, 10th July, 1787

DEAR SIR,

I thank you for your communication of the third. When I refer you to the state of the counsels which prevailed at the period you left this city, and add that they are now, if possible, in a worse train than ever, you will find but little ground on which the hope of a good establishment can be formed. In a word, I *almost* despair of seeing a favourable issue to the proceedings of the convention, and do therefore repent having had any agency in the business.

The men who oppose a strong and energetic government, are, in my opinion, narrow-minded politicians, or are under the influence of local views.

The apprehension expressed by them, that the people will not accede to the *form proposed*, is the *ostensible*, not the *real* cause of opposition; but admitting that the *present* sentiment is as they prognosticate, the question ought nevertheless to be, *is it or is it not the best form?* If the former, recommend it, and it will assuredly obtain maugre opposition.

*I am sorry you went away—I wish you were back.* The crisis is equally important and alarming, and no opposition, under such circumstances, should discourage exertions, till the structure is fixed. I will not, at this time, trouble you with more than my best wishes and sincere regards.

A stronger contrast cannot be drawn, than is seen in the tone of this correspondence, and in the conduct of the governing party in New-York.

On the one side, the utmost solicitude to seize this "critical opportunity for establishing the prosperity of this country on a solid foundation;" on the other, a cold and selfish desertion of it at the moment of its utmost peril

It was not possible to have taken a course more calculated to arrest the proceedings of the convention; and when the juncture at which the delegates from New-York retired is considered, no doubt can be entertained that such was the object.

That they acted in accordance with Clinton, was proved by his deportment at this time. Unreserved declarations were made by him, that no good was to be expected from the appointment or deliberations of this body. That the most probable result was, that the country would be thrown into confusion by the measure. That it was by no means a necessary one, as the confederation had not undergone a sufficient trial, and probably, on a more full experiment, would be found to answer all the purposes of the union.

"Clinton," Hamilton remarked, "was not a man governed in ordinary cases by sudden impulse; though of an irritable temper, when not under the immediate influence of irritation, he was circumspect and guarded, and seldom acted or spoke without premeditation or design"

Such declarations from such a source, could only have been intended to excite prejudices against whatever plan should be proposed by the convention. Feeling that Clinton's conduct might, and fearing that it would, induce the mischief he so confidently and openly predicted, Hamilton resolved to exhibit it before the public in all its deformity. He immediately published a pointed animadversion, charging these declarations upon him, and avowing a readiness to substantiate them.

Having thus interposed his personal influence to counteract this insidious policy by an appeal to the people, he hastened to Philadelphia, and there, without a vote, standing alone, and unsupported by his state, he renewed his exertions to compose the heats and heal the differences which had arisen, and, as far as was in his power, to aid in directing the course of the convention

The discussion of the compromise was protracted until late in July, when the first of the propositions having been modified, both were adopted, though by a vote indicating a wide difference of opinion. Five states were in favour of them, but they were those of secondary importance. Pennsylvania, Virginia, South Carolina, and Georgia, voted against them; and the important commonwealth of Massachusetts was divided. During this debate the number of representatives was apportioned to each state, in the first congress. It was declared that the representation ought to be proportioned to direct taxation, and to ascertain the necessary alterations in it, that a periodical census should be taken. South Carolina and Georgia, seeking to increase their relative weight, would have embraced in this census all their slaves; but the three-fifths compromise, although at first rejected,\* was finally adopted. An effort was also made to establish the principle, that the representation of the new states to be admitted into the union, should never exceed that of the original thirteen, but this unequal proposition was defeated †

In determining the period when a census should be taken, a similar contest for power was also seen. The vote was at first unanimous for a re-apportionment at the expiration of fifteen years. Then two years were proposed; then six; then twenty, a decennial census was ultimately established.

\* Connecticut, Virginia, North Carolina, and Georgia, voting for it

† Affirmative, Massachusetts, Connecticut, Delaware, and Maryland

The principles of the constitution of the first branch being settled, those of the second were considered. A proposal was made to fix the number of senators at thirty-six, and to apportion them among the states. Massachusetts and Virginia urged this change warmly, but it was resolved that each state should have an equal vote. The compromise on this point being effected, a new contest for power was seen in the several modifications suggested in the structure of the other departments of the government, and in the extent and distribution of its powers.

The legislative powers of the government were now considered, and a general declaratory clause was passed, having in view subsequent alterations. It was not to be expected that the proposed negative of Madison on the state laws, would be retained; it was only supported by the votes of three states, and in lieu of it, the legislative acts of the United States, and treaties made under its authority, were declared to be the supreme law of the land.

The institution of the executive department was the next subject of deliberation. This marked instance was now seen of the influences which were operating: Randolph had insisted earnestly on a plural executive; he suggested, as giving a reasonable security to the smaller states, the appointment of one executive, to be elected by an equality of state votes. The delegates from Virginia, who had hesitated, yielding, it was unanimously declared that the national executive was to consist of one person. The effort was renewed to render him eligible by the electors of the people. It was then proposed that he should be chosen by electors appointed by the legislatures of the states; but the choice was given to the national legislature, in conformity with the original proposition of Virginia. He was declared to be re-eligible. The trusts of carrying into execution the national laws, and of appointing the national officers, subject to the negative of two-thirds of the legislature, were con-

fided to him : and a motion was made to substitute for a term of seven years, the provision that he should hold his office during good behaviour. This important substitute was supported by the votes of four states, New Jersey, Pennsylvania, Delaware, and Virginia ; but the term of seven years was retained.

A judiciary during good behaviour was next established ; and, after an effort to confide the appointment of the judges to the executive department solely, and then, as Hamilton had proposed in his plan, to require the consent of the senate, the appointment was given to the senate ; another concession to state influence. Its jurisdiction was declared to extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony.

The discussion was continued until the twenty-sixth of July, much time being devoted to the institution of the executive, and to the consideration of a proposal to require certain qualifications of landed property and citizenship in the members of each department of the government.

The modified resolutions were then referred to a committee of detail to prepare and report the outline of a constitution on the sixth of August, to which time the convention adjourned. A draft of a constitution was on that day reported, founded upon the principles which had been previously adopted, with many supplementary provisions.

The compromise, thus far, had only extended to the structure of the government ; its influence was now chiefly seen in the limitations of its powers—limitations which may be, with much probability, ascribed to Randolph and Ellsworth, who, with Rutledge, Gorham, and Wilson, composed the committee of detail.

This supposition is founded on a fact, which, it is believed, has not heretofore attracted attention

On the twenty-second of August, seventeen hundred

and eighty-one, Randolph, Ellsworth, and Varnum, who had been appointed a committee to *prepare an exposition of the confederation*, made a report. They stated that they ought to be discharged, because "the omission to enumerate any of the powers of congress would become an argument against their existence, and that it will be early enough to insist on them when they shall be exercised and disputed"

Having specified in what particulars "the confederation requires execution," they proceeded to enumerate the cases in which they deemed the extension of the powers of congress necessary.

This exposition of the existing powers of the confederation, and this enumeration of the proposed supplemental powers, may be regarded as the source from which the detail of the legislative powers enumerated in this plan of a constitution is derived. One marked difference is observed

By the report, the concurrence of two-thirds of congress was required in the exercise of the great powers of war, treaty, and revenue, while in this draft of the constitution such concurrence is only made necessary to the passage of a navigation act—a vicious check upon legislation, certain to result in evasive refinements. The convention having refused to go into committee, this plan of a constitution was discussed in the house. In its general outline may be seen the extent to which Hamilton's system was followed, and in the similarity of some of the modifications which were proposed, the part he took as the discussion progressed.

He continued in the convention until after the thirteenth of August, when it is seen by the journal, that instead of the provision requiring as a qualification for a seat in the house of representatives that the candidate should have been a citizen seven years, he urged that citizenship and inhabitancy were sufficient pre-requisites, leaving to the discre-



tion of the legislature to prescribe such rules of naturalization as should be found expedient. He was soon after compelled again to repair to New-York.

The following letters evince his determination to give his sanction to its proceedings, under a conviction that whatever plan should be adopted, would be an improvement upon the articles of the confederation, and that a dissolution of that body without the recommendation of a substitute, would produce a dissolution of the union.

## HAMILTON TO RUFUS KING

DEAR SIR,

Since my arrival here, I have written to my colleagues, informing them if either of them would come down, I would accompany him to Philadelphia: so much for the sake of propriety and public opinion.

In the mean time, if any material alteration should happen to be made in the plan now before the convention, I will be obliged to you for a communication of it. I will also be obliged to you to let me know when your *conclusion* is at hand, for I would choose to be present at that time.

New-York, August 20, 1787

## THE SAME TO THE SAME

DEAR SIR,

I wrote you some days since, to request you to inform me when there was a prospect of your finishing, as I intended to be with you, for certain reasons, before the conclusion.

It is whispered here, that some late changes in your scheme have taken place, which give it a higher tone. Is this the case? I leave town to-day to attend a circuit in

a neighbouring county, from which I shall return the last of the week, and shall be glad to find a line from you, explanatory of the period of the probable termination of your business

New-York, August 28, 1787

His anxiety for the establishment of an energetic national government was increased by a circumstance which indicates the unsettled state of the public feeling, the distrusts of the community, and the mad projects which the deranged affairs of the country had engendered.

During his sojourn at New-York, a report was mentioned in a gazette\* of that city, that a project was in embryo for the establishment of a monarchy, at the head of which it was contemplated to place the bishop of Osnaburgh

This report was traced to a political letter, which had been circulated in Connecticut, suggesting this plot.

The extraordinary nature of this suggestion, whether intended to excite prejudices against the convention, or to alarm the anti-federalists to an adoption of such a constitution as it should propose, or as an experiment upon public opinion, engaged the attention of Hamilton. He immediately addressed a letter to Colonel Wadsworth, asking a solution of this enigma, in which he observes, "The history of its appearance among us, is, that it was sent by one Whetmore, of Strafford, formerly in the paymaster-general's office, to a person in this city.

"I am at a loss clearly to understand its object, and have some suspicion that it has been fabricated to excite jealousies against the convention, with a view to an opposition to their recommendations, at all events, I wish you, if possible, to trace its source, and send it to you for that purpose.

\* Daily Advertiser, August 18, 1787

"Whetmore must of course say where he got it, and by pursuing the information, we may at last come at the author. Let me know the political connections of this man, and the complexion of the people most active in the circulation of the letter." It appears from the reply of Colonel Wadsworth, that he had referred the inquiry to Colonel Humphries, whose letter to Hamilton of the first of September, states that this letter had been printed in a Fairfield paper of the twenty-fifth of July past. "Whetmore informs me that when he first saw it, it was in the hands of one Jared Mansfield, who, I believe, has formerly been reputed a loyalist. Indeed, it seems to have been received and circulated with avidity by that class of people, whether fabricated by them or not. I think there is little doubt it was manufactured in this state. Some think the real design was to excite the apprehensions of the anti-federalists, with the idea that the most disastrous consequences are to be expected, unless we shall accept the proceedings of the convention; but others, with more reason, that it was intended to feel the public pulse, and to discover whether the public mind would be startled with propositions of royalty. The quondam tones have undoubtedly conceived hopes of a future union with Great Britain, from the inefficacy of our government, and the tumults which prevailed in Massachusetts during the last winter.

"It seems, by a conversation I have had here, that the ultimate practicability of introducing the bishop of Osnaburgh, is not a novel idea among those who were formerly termed loyalists. Ever since the peace, it has been occasionally talked of and wished for. Yesterday, where I dined, half jest, half earnest, he was given as the first toast.

"I leave you now, my dear friend, to reflect how ripe we are for the most mad and ruinous project that can be suggested, especially when, in addition to this view, we

take into consideration how thoroughly the patriotic part of the community, the friends of an efficient government, are discouraged with the present system, and irritated at the popular demagogues, who are determined to keep themselves in office at the risk of every thing.

“I am happy to see you have had the boldness to attack, in a public paper, the anti-federal dogmas of a great personage of your state Go on, and prosper. Were the men of talents and honesty throughout the continent properly combined into one phalanx, I am confident they would be competent to hew their way through all opposition, and establish a government calculated to promote the happiness of mankind, and make the revolution a blessing instead of a curse” Here this matter terminated. It appears from a subsequent memorandum of Hamilton’s, that though there was little to fear from the project, that he did not consider it entirely destitute of reality.

His allusion, in his letter to King, to “whispered changes” in the scheme which gave it a higher tone, referred to several additional powers proposed to be vested in the legislature, which were referred; to a modification in the mode of electing, and in the duration and powers of the executive; to an enlargement of the jurisdiction of the judicial department, and to a full declaration of the supremacy of the constitution and laws of the United States,—in all of which may be seen an adoption of, or approximation to, the principles in his plan.

The tone of the convention was evidently undergoing a change, and the chief collision at this period grew out of an effort on the part of the non-slaveholding states to restrain the extension of that evil, and on the part of the planting states to exclude the power of levying duties on exports, and, by requiring the assent of two-thirds of the legislature to the enactment of a navigation act, or to acts

regulating commerce,\* to provide against a danger long the source of great but groundless apprehension in that part of the union.

In the beginning of September, Hamilton resumed his seat in the convention. No means exist of showing minutely the several propositions of which he was the author.

The great modifications the system underwent subsequent to this period, in conformity with his previously avowed opinions, and the close analogy between parts of the existing constitution and the plan of government he had framed, give the evidence of his efficient participation in the closing labours of that body. That he was elected a member of the last committee appointed, with instructions to revise the style and arrange the articles agreed to by the house, refutes the impression sought to be given, that he remained, at so interesting a crisis of this country, an almost inactive spectator of the proceedings of a great council, to the formation of which he had devoted all his energies.

A statement of a member of that committee of revisal, of distinguished talent and character, is to the point on this question. "If," Doctor Johnson remarked, "the constitution did not succeed on trial, Hamilton was less responsible for that result than any other member, for he fully and frankly pointed out to the convention what he apprehended were the infirmities to which it was liable. And if it answered the fond expectations of the public, the community would be more indebted to Hamilton than to any other member; for, after its essential outlines were agreed to, he laboured most indefatigably to heal those infirmities, and to guard against the evils to which they might expose it."

\* In a division on this question of commercial regulation, Aug 29, the votes were for the restriction, Maryland, Virginia, North Carolina, and Georgia against it, the other seven states, including South Carolina.

On the fourth of September, the grand committee of each state made an important report.

One branch of it gave full fiscal power to the government. The legislature were invested with a "power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and to provide for the common defence and general welfare of the United States."

The office of the executive had been reconsidered. His term was reduced from seven to four years, and, adopting in part Hamilton's views, he was to be chosen by electors; but, reluctant to relinquish the policy which would consider the states, and not the people, of the union as the basis of the constitution, each state was to appoint, "in such manner as its legislature may direct, a number of electors equal to its representation in congress" If the candidate should not have a majority of the ballots of the whole number of electors, the eventual choice devolved on the *senate*.

Hamilton was opposed to this provision—it being an essential part of his policy, that the chief magistrate should not be chosen by any pre-existing body, and should be the representative of the people, and not of the states. The eventual choice by the senate was also repugnant to his views. He saw, as an inevitable consequence, that many of the states, to secure to their senators an ultimate control over the executive, would defeat the choice by electors. Rather than incur this evil, to which, as the president was re-eligible, would be superadded the danger of a corrupt influence being exerted by him upon the senate, he is represented as preferring that the highest electoral ballot, though not that of a majority, should appoint him.

The constitution of this office was a subject of consideration until near the termination of their deliberations: an effort being made, but defeated, to extend the execu-

re-eligible, and to restore the choice to the national legislature

Hamilton's views as to the structure of the government, were modified during the progress of these discussions

In his minutes of the debates taken at an early period of its deliberations, this remark is found. "At the period which terminates the duration of the executive, there will be always an awful crisis in the national situation" This apprehension grew with his reflections; and when he saw that the senate were to be chosen for a period of only six years, with terms ceasing by rotation, and to be chosen by the states in their sovereign capacities, and not by electors of the people, it became a necessary consequence that he would limit the duration of the executive office proportionably. A president of so great duration as good behaviour, with a senate of so limited a duration, would soon have become its master

Influenced by these considerations, he drew up a second plan while the convention was sitting, which limited the term of the president to only three years

The powers of the president were again discussed, and were established according to the provisions in his first plan. He was declared to be commander-in-chief of the army and navy of the United States, and of the militia of the several states. All treaties were to be made by him, with the advice and consent of the senate, with this qualification, that "two-thirds of the senators present concur" In defining the power of appointment, with the exception that the senate were to have a voice in that of the heads of the executive departments, his plan was also closely followed. The other provisions as to this great office, were analogous to those he had devised, and though without the guards he had sought to interpose, the great principle was finally established, that he was to be chosen through the medium of electors chosen by the people.

His first plan, it is seen, contemplated a house of representatives, to consist in the first instance of one hundred members. This number was proposed by Hugh Williamson, but was not approved.

A house of representatives, to consist of sixty-five members, which the scheme then before the convention had in view, he thought was on so narrow a scale as to be dangerous, and justly to warrant a jealousy for the liberty of the country. It was the more important in his view to enlarge it, because of the determination to give the eventual choice of the president to that branch of the legislature, and from a belief, as he remarked, "that the connection between the president and senate would tend to perpetuate him by corrupt influence"\* Hamilton's "earnestness and anxiety" on this point were felt by Washington, and after the convention had refused to enlarge the representation, at the last moment of its sitting, when he rose to put the final question on the constitution, he requested that the ratio of representation should be established at thirty instead of forty thousand for each representative, until a census should be taken. The diminished ratio was unanimously assented to. In further security of liberty, Hamilton's important precaution had been adopted, excluding any "religious test" as a qualification for office, but omitting the prohibition in his plan of the establishment "by law of any religious sect or denomination"

One article of the draft then before that body provided that, on the application of the legislatures of two-thirds of the states in the union for an amendment of the constitution, the legislature of the United States should call a convention for that purpose.

To this article two serious objections existed. one, that such an application would not be made by the states, unless

\* Madison's Debates, 1533



with a view to increase their powers, and the more enfeeble the general government, the other, the danger to be apprehended of throwing open the whole constitution to a future convention, a measure which might result in a dissolution of the union.

Hamilton's plan avoided these evils. Unwilling to lose his hold upon the constitution about to be recommended as the great bond of union, it provided that amendments might be proposed by the legislature of the United States, two-thirds of its members concurring, which, if ratified by the legislatures or conventions of two-thirds of the states composing the union, should become parts of the still existing constitution.

His plan also probably led to the provisions in the fifth article of the constitution, which was the result of a compromise.

The draft of a constitution reported on the sixth of August, proposed that it should be laid before congress for their approbation, and declared it as "the opinion of the convention," that it should be afterwards submitted to a convention, to be chosen in each state under the recommendation of its legislature, to receive its ratification. Should congress not have thought proper to submit the constitution to be ratified, an event which, from the temper previously displayed by that body, was not improbable, the labours of the convention would have been regarded as little more than a solemn farce.

Hamilton's plan declared, "that this constitution *shall* be submitted to the consideration of conventions in the several states, the members whereof *shall* be chosen by the people, under the direction of their legislatures; the ratification of each state being final, with power to each convention, thus immediately expressing the will of the people to appoint its senators and representatives, who, as Washington would be the choice, were to elect the first president.

Thus the establishment of the constitution was ensured, the people of each state ratifying it, becoming by that act parties to it, and forming the nucleus of a more extended union.

The last article of the present constitution was evidently framed in reference to this provision, though it embodied a vicious principle of the confederation; declaring that "the ratification of the conventions of nine\* states shall be sufficient for the establishment of the constitution between the states so ratifying" it.

A revised plan of the constitution was reported by Johnson, on the twelfth of September, with a letter to congress stating it to be the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of their political situation rendered indispensable. Several amendments having been made to the plan, an engrossed copy was read before the convention on the seventeenth of September.

Though doubting much of the efficacy of several of its provisions, Hamilton earnestly urged the unanimous approval of all the members of the convention. Three—Gerry, Mason, and Randolph—withheld their assent; all the other delegates affixed their signatures, among which Hamilton's name appears as the sole representative of New-York.

From the previous narrative, it appears that any uncompeled disclosure of the proceedings of the federal convention, was a breach of an express stipulation among its members. It was to be expected that those who could violate that stipulation, would not be very scrupulous as to the accuracy of their statements.

The eminent position Hamilton held before this nation, would naturally excite opposition and lead to misrepre-

\* Seven had been proposed, then ten, then nine

sentation. In the absence of real grounds of inculpation, the more apt would be the resort to imputations of opinions offensive to the easily excited suspicions of a jealous population.

Such was the policy of his enemies. His theoretic doubts of the permanency of purely democratic institutions, and of their power to promote the happiness of a community, and his approval of the British constitution, however qualified, the open avowal of which ought to have produced the opposite effect, were tortured into evidence of opinions unfriendly to liberty, and these opinions were soon represented as designs.

Some additional statements are thus rendered necessary. In the reply previously referred to, made by Hamilton to an anonymous attack in the year seventeen hundred and ninety-two, at the seat of government, when nearly all the members of the convention were living, to a charge that he "*opposed* the constitution in the grand convention, because it was too republican," he remarked, "This I affirm to be a gross misrepresentation. To prove it so, it were sufficient to appeal to a single fact, namely, that the gentleman alluded to was the only member from the state to which he belonged who signed the constitution, and, it is notorious, against the prevailing weight of the official influence of the state, and against what would probably be the opinion of a large majority of his fellow-citizens, till better information should correct their first impressions. How, then, can he be believed to have opposed a thing which he actually agreed to, and that in so unsupported a situation and under circumstances of such peculiar responsibility? To this, I shall add two more facts:—One, that the member in question never made a proposition to the convention which was not conformable to the republican theory. The other, that the highest toned of any of the propositions made by him, was actually voted for by the

representatives of several states, including some of the principal ones, and including individuals who, in the estimation of those who deem themselves the only republicans, are pre-eminent for republican character. More than this I am not at liberty to say."\*

\* That Virginia voted for a president during good behaviour, is seen in the journal of the seventeenth of July, and that Madison gave one of these votes is not controverted by him in his report of the proceedings of that day. He only seeks to *explain* it. His statement is, that Doctor McClurg moved this term of service, with the comment, that "the probable object of this motion was merely to enforce the argument against the re-eligibility of the executive magistrate by holding out a tenure during good behaviour, as the alternative for keeping him independent of the legislature." Madison reports his own speech on this motion, which, as far as it relates to it, does not disapprove it, and adds this observation in a note: "The view here taken of the subject, was meant to aid in parrying the animadversions likely to fall on the motion of Doctor McClurg, for whom J. M. had a particular regard. The Doctor, though possessing talents of the highest order, was modest and unaccustomed to exert them in public debate." It will be recollected that this explanation is given after Hamilton's public and then uncontradicted charge, that Madison's views on this subject did not differ from his own. Complaisance strained to its utmost limit might induce these remarks to parry animadversions on a friend, but complaisance did not require that Madison should not merely have sought to parry censure of the proposition of a friend which he wished himself to be regarded as disapproving, but *that he should have recorded his vote in favour of it*. "This vote," he also observes in a note, "is not to be considered as any certain index of opinion, as a number in the affirmative *probably* had it chiefly in view to *alarm* those attached to a dependence of the executive on the legislature, and thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an executive 'during good behaviour,' were not more than three or four, nor is it certain they would have adhered to such a tenure." Madison has also left the evidence that he did not at that time regard such a term of office as being inconsistent with the republican theory. "If," he wrote, "we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or *during good behaviour*," &c.—Federalist, No. 39. Thus his vote and his theory were at this time consistent with each other.—Mad Papers, 1125, 6, 9

A subsequent misstatement of his course in the convention, drew forth a voluntary publication from Luther Martin. "That Hamilton in a most able and eloquent address, did express his general ideas upon the subject of government, and of that government which would in all human probability be most advantageous for the United States, I admit, but, in thus expressing his sentiments, he did not suggest a wish that any one officer of the government should derive his power from any other source than the people; that there should be in any instance an hereditary succession to office, nor that any person should continue longer than during good behaviour."

Another publication appeared, charging him with having proposed a monarchy to the convention. This was denied, and it was replied, that "he proposed a system composed of three branches, an assembly, a senate, and a governor. That the assembly should be elected by the people for three years, and that the senate and governor should be likewise elected by the people, during good behaviour."

In answer to this publication, Hamilton published a full explanatory view of the propositions made by him.

"Thus the charge," he said, "is at length reduced to specific terms. Before it can be decided, however, whether this would be a *monarchy* or a *republic*, it seems necessary to settle the meaning of those terms.

"No exact definitions have settled what is or is not a *republican government* as contradistinguished from a *monarchical*. Every man who speaks or writes on the subject, has an arbitrary standard in his own mind. The mad democrat will have nothing republican which does not accord with his own mad theory. He rejects even representation. Such is the opinion held by a man, now one of Mr Jefferson's ministers. Some authors denominate every government a monarchy, in which the executive authority is placed in a single hand, whether for life or for years, and wheth-

er conferred by election or by descent. According to this definition, the actual government of the United States, and of most of the states, is a *monarchy*

“In practice, the terms republic and republican have been applied with as little precision. Even the government of England, with a powerful hereditary king, has been repeatedly spoken of by authors as a commonwealth or republic. The late government of Holland, with an hereditary stadtholder, was constantly so denominated. That of Poland, previous to the dissolution of the state, with an executive for life, was never called by any other name.

“The truth seems to be, that all governments have been deemed republics, in which a large portion of the sovereignty has been vested in the whole or in a considerable body of the people; and that none have been deemed monarchies, as contrasted with the republican standard, in which there has not been an *hereditary* chief magistrate.

“Were we to attempt a correct definition of a republican government, we should say, ‘That is a republican government, in which both the executive and legislative organs are appointed by a popular election, and hold their offices upon a responsible and defeasible tenure’ If this be not so, then the tenure of good behaviour for the judicial department is anti-republican, and the government of this state is not a republic; if the contrary, then a government would not cease to be republican because a branch of the legislature, or even the executive, held their offices during good behaviour. In this case the two *essential criteria* would still concur—the creation of the officer by a popular election, and the possibility of his removal in the course of law, by accusation before, and conviction by, a competent tribunal.

“How far it may be expedient to go, even within the bounds of the theory, in framing a constitution, is a different question. upon which we pretend not to give our

opinion. It is enough for the purpose of our assertion, if it be *in principle* correct. For even then, upon the statement of the 'citizen' himself, General Hamilton did not propose *a monarchy*.

"Thus much too we will add, that whether General Hamilton at any stage of the deliberations of the convention did, or did not make the proposition ascribed to him, it is certain that his more deliberate and final opinion, adopted a moderate term of years for the duration of the office of president; as also appears by a plan of a constitution, *in writing now in this city*, drawn up by that gentleman in detail.

"Whether the *first* system presented by Mr. Hamilton, was the one to which he gave a decided preference, it would be difficult to say, since we find him adopting and proposing *a different one* in the course of the sitting of the convention. It may have been that his opinion was nearly balanced between the two, nay, it is possible he may have really preferred the *one last proposed*, and that the former, like many others, was brought forward to make it the subject of discussion, and see what would be the opinions of different gentlemen on so momentous a subject. And, it is now repeated with confidence, that the *Virginia* delegation did vote for the most energetic form of government, and that Mr. Maddison was of the number. But we desire to be distinctly understood, that it was never intended, by mentioning this circumstance, to impeach the purity of Mr. Maddison's motives. To arraign the morals of any man, because he entertains a speculative opinion on government different from ourselves, is worse than arrogance. He who does so, must entertain notions in ethics extremely crude, and certainly unfavourable to virtue."

It is not to be believed that such a statement would have been thus publicly made, challenging contradiction, during the lives of so many members of the convention, if it had been in any respect erroneous; nor that Hamilton would

have referred to his second plan of a constitution as being "in writing now in this city," unless it was there to be produced. This was a topic of much interest, and much canvassed in the political controversies which had arisen, yet his representation was not controverted. Another exposition of his opinions is found in a letter addressed by him to Colonel Pickering during the following year.\*

\* New-York, September 16, 1803

MY DEAR SIR,

I will make no apology for my delay in answering your inquiry some time since made, because I could offer none which would satisfy myself. I pray you only to believe that it proceeded from any thing rather than want of respect or regard. I shall now comply with your request.

The highest toned propositions which I made in the convention were for a president, senate, and judges, during good behaviour, a house of representatives for three years. Though I would have enlarged the legislative power of the general government, yet I never contemplated the abolition of the state governments, but on the contrary, they were, in some particulars, constituent parts of my plan.

This plan was, in my conception, conformable with the strict theory of a government purely republican, *the essential criteria* of which are, that the principal organs of the executive and legislative departments be elected by the people, and hold their offices by a responsible and temporary or defeasible tenure.

A vote was taken on the proposition respecting the executive. Five states were in favour of it, among these Virginia, and though, from the manner of voting by delegations, individuals were not distinguished, it was morally certain, from the known situation of the Virginia members, (six in number, two of them, Mason and Randolph, professing popular doctrines,) that Madison must have concurred in the vote of Virginia. Thus, if I sinned against republicanism, Mr Madison was not less guilty.

I may truly then say that I never proposed either a president or senate for life, and that I neither recommended nor meditated the annihilation of the state governments.

And I may add, that in the course of the discussions in the convention, neither the propositions thrown out for debate, nor even those voted in the earlier stages of deliberation, were considered as evidences of a definitive opinion in the proposer or voter. It appeared to me to be in some sort understood that, with a view to free investigation, experimental propositions might be made, which were to be received merely as suggestions for consideration.



These statements receive light from the letter of a contemporary.\* "I will conclude this long epistle by a concise account of a conversation had with Hamilton, which may not be deemed uninteresting, since it exhibits him as

Accordingly it is a fact, that my final opinion was against an executive during good behaviour, on account of the increased danger to the public tranquillity incident to the election of a magistrate of this degree of permanency. In the plan of a constitution which I drew up while the convention was sitting, and which I communicated to Mr. Madison about the close of it, perhaps a day or two after, the office of president has no greater duration than for three years.

This plan was predicated upon these bases —1 That the political principles of the people of this country would endure nothing but a republican government —2 That in the actual situation of the country, it was itself right and proper that the republican theory should have a fair and full trial —3 That, to such a trial it was essential that the government should be so constructed as to give it all the energy and the stability reconcilable with the principles of that theory. These were the genuine sentiments of my heart, and upon them I then acted.

I sincerely hope that it may not hereafter be discovered that through want of sufficient attention to the last idea, the experiment of republican government, even in this country, has not been as complete, as satisfactory, and as decisive, as could be wished †

\* Governor Lewis

† In the appendix, No 5, to Madison's Debates this letter is referred to as evidence that "Colonel Hamilton was under the erroneous impression that this paper limited the duration of the presidential term to three years."

The "*paper*" thus referred to by Madison, is the *first* plan. The term of *three years* is in the *second* plan. Madison has not left behind him the original of either of the plans which Hamilton gave him, but his copy of one of them. Hamilton's statement is, that he communicated to Madison the plan in which the office of president has no greater duration than three years not that he left it with him but on the contrary publicly refers to it as "a plan of a constitution in writing now in this city, drawn up by that gentleman in detail."

Having obtained a copy of the *first plan*, which probably was used during the debates in the convention, Madison retains it in his possession, and refers to it as evidence of Hamilton's "want of memory" and not to the *second plan* which Hamilton tenders as giving the testimony to the change of his opinions. But he does not deny that there was a *second plan*. It will be remarked that the volume containing the Journal of the Convention deposited in the department of state is imperfect—the minutes of September 15th being crossed with a pen, and that the deficiency is supplied by minutes furnished by Madison. Thus the evidence which this part of the journal might have given on this subject, is lost—Journal, p. 379, in a note.

a statesman who looked beyond the present to the far future interests of his country. It is well known that he never was in the habit of concealing or disguising his sentiments on the subject of government.

“Openly denouncing, on all occasions, the assertion ‘that the best administered was best,’ as a political heresy, maintaining the superior aptitude to a good administration of some systems over others, and giving the preference, abstractedly considered, to a well-balanced and limited monarchy, he was at the same time undeviating from the opinion that such a government could not be established in the United States, because a necessary ingredient in its composition, a privileged order, would be sought for in vain among a people whose favourite motto was ‘Liberty and Equality.’ When, therefore, the paragraphists of the day announced that he had proposed in the convention of the states a monarchic form of government, I was satisfied it was the effect of misconception or designed misrepresentation.

“A second version, that he proposed a presidency for life, I thought more probable, but determined to suspend my opinion until I should have an interview with him. This was afforded to me soon after his return to the city of New-York. The monarchic proposition, as I expected, he explicitly denied. The other he admitted, with the qualification, a president during good behaviour, or for a competent period, subject to impeachment, with an ineligibility forever thereafter.

“‘My reasons,’” he said, “‘were, an exclusion, as far as possible, of the influence of executive patronage in the choice of a chief magistrate, and a desire to avoid the incalculable mischief which must result from the too frequent elections of that officer. In conclusion, he made the following prophetic observation: ‘You nor I, my friend, may not live to see the day, but most assuredly it will come, when

every vital interest of the state will be merged in the all-absorbing question of *who shall be the next PRESIDENT?* ”

As to the opinions entertained by him on the theory of government, it is felt that in the mode in which, from a desire to withhold nothing, they appear, much injustice may have been done him; as in the brief of his great speech, previous to an exposition of his first plan of a constitution, the mere general heads are given without those qualifications that must have formed an essential part of it; while, of the various efforts made by him to harmonize and to adjust the different parts of the complicated scheme as it progressed, evolving new views and sources of thought, and thus informing the mind of the convention, so little can be placed before the public.

Happily, in a comparison of this brief with his numbers of the *Federalist*, they will be found, with the exception of his abstract discussion of the theory of government, in a great measure to have filled up its outline.

From these sources it is ascertained that the leading maxim of Hamilton was, that a good government consists in a vigorous execution, that such vigour is “essential to the security of liberty,” and that, “in the contemplation of a sound and well-informed mind, their interests never can be separated.”

To reconcile the requisite vigour with the perfect security of liberty, he well knew was almost impracticable; to approximate them was all that he hoped to effect; but in what mode this could best be accomplished, was a problem which he acknowledged to be full of difficulties.

His well-founded and openly avowed doubts upon a subject which has embarrassed every reflecting practical mind, have been denounced as evidences of dispositions unfriendly to freedom, and upon so slight a basis has been raised a mass of prejudice which impeded all his efforts to promote the well-being of this country. To apply to him his own gen-

eral remark, his "enlightened zeal for the energy and efficiency of government, has been stigmatized as the offspring of a temper fond of power, and hostile to the principles of liberty" Without caring to propitiate popular prejudices on a subject as to which his own declaration is deemed sufficient—"I presume I shall not be disbelieved when I declare, that the establishment of a republican government on a safe and solid basis is an object of all others nearest and most dear to my own heart"—it is enough to refer to the whole tenor of his life

At the age of seventeen he is seen combating the arbitrary policy of England; exhorting the American people to resistance; unfolding the future glories of the empire, rejecting with scorn the idea of a system sustained "by pensioners, placemen, and parasites," holding up to them, as the great prize of the contest they were invited to wage, the establishment of the "steady, uniform, unshaken security of constitutional freedom," and avowing with a noble enthusiasm, which was his perpetual inspiration, "I would die to preserve the law upon a solid foundation, but take away liberty, and the foundation is destroyed"

In seventeen hundred and eighty, amidst the din and tumult of arms, displaying all the evils of a want of government, and urging "a solid confederation"

In seventeen hundred and eighty-one, pressing on the minds of the public, in the "Continentalist," the organization of a "great federative republic, closely linked in the pursuit of a common interest"

In seventeen hundred and eighty-two, inducing the legislature of New-York to propose "a general convention, authorized to revise and amend the confederation"

In seventeen hundred and eighty-three, at least an equal participator in every effort to invigorate the confederacy, framing an appeal to the people, exhibiting its infirmities, and inviting them to establish a well-balanced government.

In seventeen hundred and eighty-four, cautioning them against the excesses of liberty, and enjoining them to watch, with more intensity than the vestal fire, "this sacred deposit" which had been confided to them

In seventeen hundred and eighty-five, imploring them to dismiss the jealousies which had been excited for their destruction, and to repose their trust where it should be placed—"all government implying trust."

In seventeen hundred and eighty-six, again addressing them from Annapolis, and invoking them, by the strongest motives, to appoint a convention empowered to frame a constitution "adequate to the exigencies of the union"

And in seventeen hundred and eighty-seven, after inducing the concurrence of New-York and the co-operation of congress, as a member of that convention, sacrificing all prejudgments; surrendering his matured opinions, and labouring until he saw a constitution framed, not such as he would have desired, but "having, as far as was consistent with its genius, all the features of a good government;" a constitution to which he pledged his support by his signature—to fulfil which pledge he devoted all his energies.

In this series of acts, having one uniform and single end—the "establishment of a republican government upon a safe and solid basis"—will be found an ample refutation of all the calumnies which have been propagated.

But, while repelling this accusation of his hostility to the existing system, it would have been a not less injustice to his memory to have concealed his distrusts of the success of an unbalanced democracy.

History had shown all free governments, either convulsed by intestine feuds and foreign influence, or prostrated before the mob and surrendered to arbitrary hands; exhibiting in every stage of their progress deeper shades of misery and humiliation.

To this current of human affairs there existed but one

exception. A government, springing up amidst the bigotry and barbarism of the middle ages, had been seen gradually moulded by the steady influence of enlightened opinion; resisting during centuries every form of violence, and when at last overthrown by the crimes of its magistrates, recovering itself by the strong influence it had itself created, and renewed in its vigour by constitutional checks, the fruits of experience; susceptible of amendment without necessarily jeopardizing its existence; and notwithstanding its defects—for what government is without defects?—imparting to its people the greatest security and largest amount of durable happiness which any constitution ever had bestowed.

Thus finding in the British government a system proceeding upon the fact, that society is necessarily composed of different interests, and obviating the great difficulty of all governments by preserving a counterpoise of each interest; exerting itself, but regulated in that exertion, for its own protection. Thus seeing the realization of that for which the wise of antiquity had wished, but had not dared to hope,\* which the experience of centuries had approved, can it be a source of surprise that he entertained the opinion, that “it was a model, though unattainable, to be approached as near as possible.”

But his was not a blind or indiscriminate admiration. The representation that “it was his error to adhere too closely to the precedents of the British constitution; that he conceded sometimes, in these precedents, equal authority to what was good and bad, to its principles and its

\* Cicero observes—*de Repub* 1 2—“*Esse optime constitutam rempublicam quæ ex tribus generibus illis, regali, optimo, et populari, sit modice confusa*” And Tacitus, in his *Annals*, remarks, “*Cunctas nationes, et urbes, populus aut primores, aut singuli regunt; delecta ex his et constituta reipublicæ forma laudari facilius quam evenire, vel si evenit, haud diuturna esse potest*”

abuses; that he did not allow to the variety of political forms, to the flexibility of human society, a sufficient share nor a bold enough confidence,"\* is founded on the calumnies of his opponents, propagated for the two-fold purpose of exciting against him the jealousy of the American people, and of impairing his permanent fame.

In his commentary on the federal constitution, when speaking of the kingdom of Great Britain, he observes † "Her peculiar felicity of situation has, in a great degree, preserved the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption"

He is previously seen to have condemned the great innovation in her system, in the vote of septennial from triennial parliaments, as producing an "overgrown power" in the crown; and referring to what he calls "these dangerous practices," he extols "the important distinction, so well understood in America, between a constitution established by the people and unalterable by the government, and alterable" by it.

He speaks also of the "ostentatious apparatus of her monarchy" as a source of expense, and adverts to her experience as presenting to mankind "so many political lessons, both of the monitory and exemplary kind."

He dwells upon the superiority, in one particular, of the federal constitution, as separating the judiciary entirely from all political agency, and points out the "absurdity of subjecting the decisions of men selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men, who, for the want of the same advantage, cannot but be deficient in that knowledge."

Nor was he insensible to the variety of political forms

\* Vie Correspondance et Ecrits de Washington, &c par M Guizot.

† Federalist, Nos 8, 53, and 56

suggested by the flexibility of human nature, and the varying condition of society. In his letter to Washington previously quoted, he is seen to remark, that though "the people were not ripe for such a plan as he advocated, yet there was no reason to despair of their adopting one equally energetic," and in this convention he proposed two plans of government, founded on different principles, and with different combinations of the same principle; and aided largely in forming the compound system which was adopted.

In answer to the objections derived from former experience to republican governments, he exclaims. "Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted these gloomy sophisms; and, I trust, America will be the broad and solid foundation of *other* edifices, not less magnificent, which will be equally permanent monuments of their error."

Hamilton was too wise not to have known that a constitution such as that of England—though, if it had been established, it would have maintained itself—could not be established in the United States; that every attempt to introduce it with the consent of the people, would be a fruitless folly, and, without that consent, a hideous crime. He sought to effect all that was practicable under such circumstances—to embody in a republican system such checks as it would admit—to reconcile, to the utmost extent its genius would bear, energy and stability with real liberty—hoping that this great commonwealth might repose under a Constitutional Charter, granted and revocable by the people, until experience should suggest and cure its defects.

The jealousy of political rivalry has misrepresented his views, and condemned his "peculiar opinions," because they did not prevail.

But it forgot that it is the characteristic of minds of the first order to aim at objects above the common reach.



The eye that penetrates beyond the horizon of error; the hand which, amid its daily ministrations, is ever pointing to some great future good; the genius that, always fertile in expedient, feels that the power which impels, makes sure its aim,—these all are directed by a generous confidence of success, springing from conscious unexhausted resources, that will not, cannot despair.

Ordinary men do not admit the magic virtues, the almost inspiration by which they are overruled to perform their respective parts; but the influence is exerted, the plans, the institutions, the hopes of the world are raised, and though the agent may be unseen, or withdrawn, it moves on in glorious harmony with the high destinies he has prescribed.

It is true that Hamilton's views did not all prevail, but their conservative character was imparted to this great reform, and much of its best spirit may still be due to labours which, though not wholly successful, owing to the hesitations of others, were not without the choicest fruits.

His whole plan was not adopted; but when it is asked whose plan was, the answer is, that of no individual. "The truth is," Hamilton remarked, "the plan, in all its parts, was a plan of accommodation."

As a great bond of union to a dissolving confederacy, he valued it beyond all price; but as creating a compound government of a very extraordinary and complicated nature, in common with Washington and Patrick Henry, and other distinguished individuals, he doubted its results. "I acknowledge," he said, when recommending its adoption,

\* Guizot remarks—"Hamilton must be classed among the men who have best known the vital principles and fundamental conditions of a government; not of a government such as this, but of a government worthy of its mission and of its name. There is not in the constitution of the United States an element of order, of force, of duration, which he has not powerfully contributed to introduce into it, and to cause to predominate."

“a thorough conviction, that any amendments which may upon mature consideration be thought useful, will be applicable to the organization of the government, not to the mass of its powers”

These doubts have been decided as extravagant, and the prosperity of this country has been appealed to as a complete refutation of them. How far this prosperity is to be ascribed to the influences of the constitution, other than as a mean of preserving the national union, is not easily ascertained, but certainly, without derogating from the value of that instrument, much of it may be attributed to a peculiar felicity of situation and of circumstances, independent of the government

Nor is prosperity, in its most observed aspects, an unerring or a universal test of the excellence of political institutions; for it cannot be denied, that a nation may have fast increasing wealth, and expanding power, and widely diffused intelligence, and boundless enterprise, while principles may be at work in its system that will ultimately render all these advantages sources of evil.

Experience had hitherto been supposed to teach, that a stable government required the operative counterpoise of the different interests of property and numbers. The federal constitution has substituted for these, theoretic checks; a senate representing states, which are only the artificial representatives of different aggregates of the people, and a house of representatives chosen directly by the same people under the influence of those states—this senate of greater duration than the popular branch, and therefore supposed to be removed from immediate popular impulses, yet by the doctrine of instruction, which is fast becoming a law of the system, rendered the mere organ of these impulses; an executive chosen by the members of separate electoral colleges of the people of the states, sitting apart and supposed to be secure from the too direct

action of the mass, yet in fact chosen, not to deliberate on the merits of a candidate, but pledged to carry into effect the nomination of a caucus—that candidate thus elevated, filling an executive department of limited powers, but possessing powers far above the constitution, as the common focus of the passions of the multitude.

Other of the ascertained effects of the system may also be adverted to. Among the chief ends of government are—security against foreign aggression—internal peace. To attain the first of these objects, the force of the community must be at the command of the common sovereign; of the latter, the law is the shield. Yet, in the only war which has been waged, some of the most powerful members of the union have been seen to withhold their military force from the arm of the general government, expressly charged with the general defence, uncontrolled, uncompelled; while the tranquillity and existence of the union has been jeopardized by the open defiance by a state of the only peaceful sanction, the judicial department of the United States, and a great power of the national government, the want of which was a primary motive to its establishment, is the subject of a compromise.

Modern discoveries of art have supplied new and important ligaments to this union. Time, with its assimilating influences, has given that union strength. Its mutual glory has extended over it a protecting canopy; but while the patriot will ever devote himself to its preservation, he is too well aware how much more probable is its dismemberment than its reunion, to regard as a visionary skepticism the paternal wisdom of its founders, who feared and doubted, while they loved and hoped.

The following observations of Hamilton, written just as the general convention adjourned, give his impressions at that time.

“The new constitution has in favour of its success these

circumstances A very great weight of influence of the persons who framed it, particularly in the universal popularity of General Washington The good-will of the commercial interest throughout the states, which will give all its efforts to the establishment of a government capable of regulating, protecting, and extending the commerce of the union. The good-will of most men of property in the several states, who wish a government of the union able to protect them against domestic violence, and the depredations which the democratic spirit is apt to make on property; and who are besides anxious for the respectability of the nation. The hopes of the creditors of the United States, that a general government possessing the means of doing it, will pay the debt of the union A strong belief in the people at large of the insufficiency of the present confederation to preserve the existence of the union, and of the necessity of the union to their safety and prosperity; of course, a strong desire of a change, and a predisposition to receive well the propositions of the convention

“Against its success is to be put, the dissent of two or three important men in the convention, who will think their characters pledged to defeat the plan; the influence of many *inconsiderable* men in possession of considerable offices under the state governments, who will fear a diminution of their consequence, power, and emolument, by the establishment of the general government, and who can hope for nothing there, the influence of some *considerable* men in office possessed of talents and popularity, who, partly from the same motives, and partly from a desire of *playing a part* in a convulsion for their own aggrandizement, will oppose the quiet adoption of the new government; (some considerable men out of office, from motives of ambition may be disposed to act the same part) Add to these causes the disinclination of the people to taxes, and

of course to a strong government; the opposition of all men much in debt, who will not wish to see a government established, one object of which is to restrain the means of cheating creditors. The democratical jealousy of the people, which may be alarmed at the appearance of institutions that may seem calculated to place the power of the community in few hands, and to raise a few individuals to stations of great pre-eminence; and the influence of some foreign powers, who, from different motives, will not wish to see an energetic government established throughout the states.

“In this view of the subject, it is difficult to form any judgment whether the plan will be adopted or rejected. It must be essentially matter of conjecture. The present appearances and all other circumstances considered, the probability seems to be on the side of its adoption.

“But the causes operating against its adoption are powerful, and there will be nothing astonishing in the contrary.

“If it do not finally obtain, it is probable the discussion of the question will beget such struggles, animosities, and heats in the community, that this circumstance, conspiring with the *real necessity* of an essential change in our present situation, will produce civil war. Should this happen, whatever parties prevail, it is probable governments very different from the present in their principles, will be established. A dismemberment of the union, and monarchies in different portions of it, may be expected. It may however happen that no civil war will take place, but several republican confederacies be established between different combinations of the particular states.

“A reunion with Great Britain, from universal disgust at a state of commotion, is not impossible, though not much to be feared. The most plausible shape of such a business would be, the establishment of a son of the present mon-

arch in the supreme government of this country, with a family compact

“If the government be adopted, it is probable General Washington will be the president of the United States. This will ensure a wise choice of men to administer the government, and a good administration. A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the state governments, and reduce them to an entire subordination, dividing the larger states into smaller districts. The *organs* of the general government may also acquire additional strength.

“If this should not be the case, in the course of a few years, it is probable that the contests about the boundaries of power between the particular governments and the general government, and the *momentum* of the larger states in such contests, will produce a dissolution of the union. This, after all, seems to be the most likely result.

“But it is almost arrogance in so complicated a subject, depending so entirely on the incalculable fluctuations of the human passions, to attempt even a conjecture about the event.

“It will be eight or nine months before any certain judgment can be formed respecting the adoption of the plan.”

Anxious as his forebodings were, it will be seen that his exertions were not for a moment relaxed. While he did not disguise his doubts, he declared, “I am persuaded it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.” “Though it may not be perfect in every part, it is, upon the whole, a good one, is the best that the present situation and circumstances of the country will permit.”

Then followed his closing appeal, recommending its adoption in language which every revolving year renders more impressive.

“To balance a large society on general laws,” it had been said,\* “the judgments of many must unite in the work. **EXPERIENCE** must guide their labour, **TIME** must bring it to perfection, and the **FEELING** of inconveniences must correct the mistakes which they *inevitably* fall into in their first trials and experiments.” “These judicious reflections,” Hamilton remarked, “contain a lesson of moderation to all the sincere lovers of the union, and ought to put them upon their guard against hazarding anarchy civil war, a perpetual alienation of the states from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain but from **TIME** and **EXPERIENCE**. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A **NATION** without a **NATIONAL** government, is an awful spectacle. The establishment of a constitution, in time of profound peace, by the voluntary consent of a whole people, is a **PRODIGE**, to the completion of which I look forward with trembling anxiety.”

\* Hume's Essays, v. 1, p. 128.





